

No. 15724

United States
Court of Appeals
for the Ninth Circuit

FRED C. NIEDERKROME, E. ROYCE, DORA
F. ROYCE, EZRA ROYCE, B. ROYCE,
ESTATE OF ISABELLE H. ROYCE, DE-
CEASED, B. Royce, Executor, ROBERT T.
JACOB, AGNES C. JACOB, ALBERT L.
SCHNEIDER and BERTHA SCHNEIDER,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 313 to 630, inclusive)

Petitions to Review Decisions of The Tax
Court of the United States

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In The Tax Court of the United States

Docket Nos. 51491, 51526, 51527, 51528, 51529,
51530, 51531, 51532, 51533, 51534

FRED C. NIEDERKRÖME; E. ROYCE AND
DORA F. ROYCE; EZRA ROYCE; B.
ROYCE; ESTATE OF ISABELLE H.
ROYCE, DECEASED, ET AL; B. ROYCE
AND ESTATE OF ISABELLE H. ROYCE,
DECEASED, ET AL; ROBERT T. JACOB
AND AGNES C. JACOB; ALBERT L.
SCHNEIDER; ALBERT L. SCHNEIDER
AND BERTHA SCHNEIDER; BERTHA
SCHNEIDER, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

TRANSCRIPT OF PROCEEDINGS

Courtroom, U. S. Court of Appeals,
U. S. Court House, Portland, Oregon.

Monday, May 9, 1955.

The above-entitled matter came on for hearing,
pursuant to notice to the parties, at 10:12 o'clock
a.m.

Before: Honorable Ernest H. Van Fossan, J.,
Presiding.

Appearances: Mr. Randall S. Jones and Mr.
R. T. Jacob, Portland, Oregon, for the Petitioners.

Mr. John D. Picco, Bureau of Internal Revenue,
Portland, Oregon, for the Respondent. [1]*

* * * * *

ROBERT T. JACOB

a witness called on behalf of the Petitioners, first
having been duly sworn, testified as follows:

The Clerk: Will you please state your name and
address for the record?

The Witness: Robert T. Jacob, Portland——
(interrupted) [27]

The Clerk: Robert E. Jacob?

The Witness: Robert T. J-a-c-o-b, Portland,
Oregon.

Direct Examination

Q. (By Mr. Jones): Mr. Jacob, how long have
you been a resident of Portland, Oregon?

A. About forty years.

Q. And you are married, and your wife's name
is what please? A. Agnes C. Jacob.

Q. And you and Mrs. Jacob are the Petitioners
in Docket Number 51531, involved at this trial?

A. That is correct.

The Court: Mr. Jones; Mr. Jones, if you will
kindly indicate if you can, at each breaking point,
where the testimony is to be applied—which issue.

Mr. Jones: The testimony of this witness will
be pertain—pertain solely and exclusively to the
main issue, the issue of the Oregon Motor Stage
stock purchase and redemption.

* Page numbers appearing at top of page of Reporter's Original Transcript of Record.

(Testimony of Robert T. Jacob.)

The Court: Bear that in mind throughout the case.

Mr. Jones: Yes, thank you very much.

Q. What is your occupation, Mr. Jacob?

A. I am an attorney.

Q. And you are an attorney—attorney admitted to practice in the Courts of Oregon for a good many years?

A. Since 1926. [28]

Q. Now—I am trying to, your Honor, keep from applying the facts which I think we have stipulated—those which are asked as evidence, so I am skipping something here—were you interested with other people in acquiring some of the stock of the Oregon Motor Stages in the year 1945?

A. I was.

Q. Would you name who those parties were?

A. They were E. Royce, B. Royce, F. C. Niederkrome, A. L. Schneider, L. R. Bentson—B-e-n-t-s-o-n, and myself.

Q. Now, E. Royce is also called sometimes Ezra Royce or Roy Royce, is that right?

A. That is correct.

Q. And B. Royce is sometimes called—his name is Barney Royce?

A. Bonnie, yes. He is called Barney, but his name is Bonnie, B-o-n-n-i-e.

Q. Now, would you please tell us about the negotiations for the purchase of that stock which you were interested in?

A. Sometime in April or May of 1945, Mr. Schneider learned of the fact that this stock of

(Testimony of Robert T. Jacob.)

Oregon Motor Stages was for sale. He contacted the then owners of the stock, and communicated the fact to Mr. E. Royce that the stock was for sale, and from then on, Mr. Royce and he started to talking to different individuals about purchasing some of the stock, and I was one of the group who was interested in buying the stock, and as a result, agreed to take a hundred shares of [29] the —of the stock, along with others who were planning on acquiring other shares.

Q. Now, how many shares did the group, except for Mr. Bentson, expect to talk about?

A. We expected and wanted to buy only four hundred shares.

Q. And what were you going to do about the other three hundred and fifty shares?

A. Originally, we discussed with Mr. Frank McCulloch, the attorney for the selling group, the matter of giving the corporation an option to acquire these shares, and he drafted a form of agreement, in that direction. Then, too, we were—we were discussing the matter of acquiring additional shares with other individuals, and while—during the time that these matters were pending, Mr. L. R. Bentson, of Vancouver, B. C., came to Portland and he expressed an interest in acquiring some of the shares.

Q. Now, before we go into Mr. Bentson's arrival here, who were some of the people that you were discussing this with to take some of the three fifty?

(Testimony of Robert T. Jacob.)

A. Mr. A. H. Wenck of Seattle, and Mr. Lance Rothchild of San Francisco.

Q. And were they men of sufficient means so that they could have done so?

A. They were men of considerable means. Mr. Rothchild particularly was a very wealthy man.

Q. And then when did you first meet Mr. Bentson yourself? [30]

A. I met him sometime during the middle or latter part of June, 1945. I met him at the home of Mr. Royce—E. Royce.

Q. And what kind of an appearing man was Mr. Bentson?

A. Mr. Bentson made a very good appearance. He was a man—very intelligent and alert at that time, and I was quite impressed with his stability. I was informed that he had been a successful mining operator in Alaska; that he had taken from a gold mine—placer gold mine, something in excess of eight hundred thousand dollars, and his dress and appearance was that of a very substantial sort of man.

Q. Well, after you met him, how did you learn through—how did you learn that he would be interested in acquiring any of the stock of the Portland—or of the Oregon Motor Stages?

A. Well, he had been in Portland, I think, some days when I met him, and he told me that he had been discussing this proposition with Mr. Royce—Mr. E.—well, probably with both E. and B. Royce,

(Testimony of Robert T. Jacob.)

but anyway, he said he had been discussing it, and he was interested in acquiring the stock.

Q. Was there any discussion between you and the others of this group, except him, about his acceptability to your project?

A. Well, it developed as a matter of course, that he was accepted.

Q. And then from the time that you decided to go ahead with him, other negotiations, I suppose——(interrupted)

A. We dropped—we dropped the other negotiations, yes, and [31] went ahead with him.

Q. All right. Now, how did he happen to—do you know how he happened to get in touch with anybody at American Business Credit Corporation?

A. I introduced him and Mr. Royce to George W. Davidson, who was then the Vice President and Manager of ABC here in Portland. I had been instrumental in getting some financing done by ABC for some other clients, and so I introduced Mr. Bentson and Mr. Royce to George Davidson, and the negotiations about the loan were carried on from there by them.

Q. Now, is Mr. Davidson still living?

A. No, he's deceased.

Q. And what about Mr. Bentson?

A. He's deceased also.

Q. Do you know what was—were you present at any of the negotiations between Mr. Bentson and Mr. Davidson?

(Testimony of Robert T. Jacob.)

A. No, after I introduced them, they went on from there.

Q. Now, there are, I think going to be admitted on stipulation in this case, some receipts given by Mr. Bentson to you, Mr. E. Royce, B. Royce, Mr. Niederkrome and Mr. Schneider, for stock. What was the purpose of those?

A. That was the loan to Mr. Bentson of our security as we understood it, ABC required Mr. Bentson to borrow our stock to be pledged along with his as security for this loan.

Q. Why were you people willing to give your stock for security [32] for someone else's loan?

A. Well, simply because we wanted to pledge our stock, and we understood that Mr. Bentson, his funds were all in Canada, and were blocked by reason of war regulations in existence at that time, and I understood also that because he was a Canadian citizen, that the ABC required additional security, and we saw—we had no objection to loaning our collateral to him.

Q. From the standpoint of a potential investor in 1945—in June of 1945, what was the appearance of Oregon Motor Stages?

A. It was excellent. They had had a very fine earning record, and they were in good financial condition, and although their equipment was becoming somewhat worn, and some of it decidedly antiquated, they still were doing an excellent business, and their earnings had been in excess of a million dollars. In one years—in one year, I

(Testimony of Robert T. Jacob.)

believe in excess of two million dollars, and they had been paying substantial dividends, and the prospects were still very good at that time because the war was still on.

Q. Well, what was your own attitude at the time with respect to the probable ending of the war—the effect upon that business?

A. Well, we—we had no idea, of course, about that. None of us knew about the existence of the atomic bomb, and we expected the operation to continue at the then pace for an indefinite period. We had no—it was true that the—Germany had capitulated, but according to our information, there was still considerable danger so far as Japan was concerned, and we had no idea—Russia was being [33] asked to come into the war. We had no idea how long it would continue, or whether it might be a year, two years or what.

Q. Well, was there any thought by you or the people that you were with there, of a quick closing?

A. No, not at all. We had no idea that there would be.

Q. All right. Now, then, what type of business patronage did Oregon Motor Stages have, in connection with—(interrupted)

A. A good part of it was from the camp at Camp Adair, Oregon, which was located just out of Corvallis, and a lot of it was the Tongue Point Naval Station, and the Auxiliary Stations in Astoria, and our longest run was from Portland to

(Testimony of Robert T. Jacob.)

Astoria, and that, of course, was one of the most prolific sources of income that the company had at that time; and another thing too, the gas rationing made the use of private automobiles rather restrictive, and we were enjoying a very substantial patronage from the civilian trade. A lot of it was even local trade, from the outlying suburban towns into Portland during the war activity.

Q. Mr. Jacob, what area did the company's franchises cover?

A. Covered the operations from Portland through to Oregon City and down to Tillamook, through McMinnville, out through Corvallis to Salem, and down to Newport, and from Newport to Astoria, and from Astoria to Portland by way of the River Road and also Sunset Highway. Then we had local service to Forest Grove, and to McMinnville, to Newberg, and Reedsport—a number of the local suburban towns in this locality. Besides, we had the City operation in [34] Salem and Eugene, and there was a run too, from Eugene over to the coast.

Q. That was all franchised territory?

A. All under franchise—permanent operation.

Q. Permanent operation? A. Yes.

Q. Now, after you had decided—your group there had decided to take in Mr. Bentson, what took place?

A. Then we arranged to acquire cashier's checks for the respective amounts that were to be paid. After acquiring the checks, we met in the board

(Testimony of Robert T. Jacob.)

room of the First National Bank, Main Branch, at which all of our group, I believe, except B. Royce might not have been there. Were there, Mr. L. D. Jones of the selling group, and Mr. Lemon and Mr. Frank McColloch, an attorney who was representing the group were there, and Mr. Benton, of course, was included—I meant to include him in our group. He was there.

Q. And what took place there?

A. We met around the table and the stock of one of the stockholders was—the share with the certificate was issued to Mr. E. Royce, and he qualified as a Director. Then one of the retiring Directors submitted his resignation, after Mr. Royce was elected, then the meeting continued. Another Director was elected after the resignation of one of the outgoing directors and so on until the old Board retired and the new Board was elected. When that was accomplished, the cashier's checks were delivered to Mr. McColloch, [35] I believe, as representative for the group, and the stock was issued in the names of the respective purchasers according to the number of shares that each had purchased.

Q. You all got stock certificates?

A. All got stock certificates is correct.

The Court: Is that Mr. McColloch, C. E. McColloch, or Frank McColloch?

Mr. Picco: No, it's Frank, your Honor.

Mr. Jones: And that is M-c-C-o-l-l-o-c-h. He is

(Testimony of Robert T. Jacob.)

a brother of Judge Claude McCulloch, of the Federal bench. [36]

* * * * *

Q. (By Mr. Jones): Mr. Jacob, I am handing you the Petitioner's Exhibit Number 32 for identification, and I am asking you if this is your signature on it, and if so, to explain what it is?

A. That is my signature, and Petitioner's Exhibit 32 for identification is Oregon Motor Stages Certificate of Common Stock, Number Seventy-seven, for three hundred and fifty shares, and issued in the name of L. R. Bentson; dated July 2nd, 1945.

Q. Now, I notice that it is endorsed in blank on the back of it. Will you tell us about where and when those endorsements were put on, if you know?

A. These endorsements—the endorsements were made at the meeting I have just described. Mr. Bentson signed, and his signature was witnessed by Mr. Frank McCulloch.

Q. And then was that given to ABC?

A. It was delivered to a representative of ABC at that time.

Q. At any time we use "ABC" the record can show that that is "American Business Credit Corporation," the Oregon company. If [37] we want to speak of the Delaware Company, we will say "the Delaware Company."

Mr. Jones: Now, I would like to offer this certificate in evidence. (Exhibit handed.)

Mr. Picco: No objection, your Honor.

(Testimony of Robert T. Jacob.)

The Court: It will be received. Exhibit 32.

(Petitioner's Exhibit 32, witness Jacob, received in evidence.)

Q. (By Mr. Jones): Now, Mr. Jacob, were certificates similar to that made at the same time, under the same circumstances to you for a hundred shares, to Mr. E. Royce for the hundred and forty-five shares, to Mr. B. Royce for fifty shares, to Mr. Niederkrome for fifty-five shares, and to Mr. Schneider for fifty shares? A. They were.

Q. Were they all endorsed in the same manner?

A. Exactly.

Q. And at the same time, were they also delivered to ABC?

A. They were. They were all endorsed and our signatures were witnessed by Mr. McColloch in those instances.

Q. That was after you had loaned them to Mr. Bentson, and taken his receipts?

A. They were—that was one of the steps in making of the loan, yes.

Q. All right.

Mr. Jones: I will, just for—these are already going in [38] evidence—they have already—we have a proposed—proposed paragraph in our stipulation that certain exhibits, unless they are objected to and the objection sustained, will be deemed to have been received in evidence, your Honor, and what I am handing Mr. Jacob now, are the Petitioner's Exhibits 2, 3, 4, 5 and 6—are all in that category. They may be marked later,

(Testimony of Robert T. Jacob.)

because I had pencilled numbers on them that the Clerk can pick them up from. I just would like to show them to the witness, and then to ask a question about them. No objection to that?

Mr. Picco: No objection to those exhibits, your Honor. They will be attached properly and identified in the stipulation.

The Court: They may be received at this time then.

Q. (By Mr. Jones): All right. Now, are those Exhibits of the Petitioner, 2 through 6, the receipts that you have been mentioning which were given by Mr. Bentson for the borrowing of your respective shares? A. That's correct.

Q. Do you know whether—do you know where Mr. Bentson signed a promissory note—the promissory note that he signed in this case, were you present when he signed it—you were there when he signed? A. No, I wasn't; I was not.

Q. You didn't see it signed?

A. No, I didn't.

Q. Now, Mr. Jacob, when you were—you mentioned purchasing [39] a cashier's check. Was that purchased before you went into this room?

A. That's right.

Q. And were you and Mr. Royce and Mr. Niederkrome—Mr. E. Royce, B. Royce, and Mr. Niederkrome and Mr. Schneider together when this was purchased?

A. We were all there, I think, except Mr. B.

(Testimony of Robert T. Jacob.)

Royce. I don't recall with respect to him, but all the rest of us were.

Q. Is this a copy—this Exhibit 8, a copy of the order for the checks that you wanted issued as cashier's checks?

A. It is, and the numbers of the respective cashier's checks are inserted—were inserted by the issuing teller.

Q. And those totalled four hundred thousand dollars' worth of cashier's checks?

A. That's right.

Q. I am speaking for the—(interrupted)

Mr. Picco: What Exhibit is that?

Q. I am speaking now for the record of Exhibit Number 8. Now, each of you people individually—(interrupted)

The Clerk: They are going to be attached to the stipulation, so I don't mark them.

Q. All right. Did each of the individuals that are—that you have last mentioned, pay over their own money at that time?

A. Well, I—it is my recollection they did. I don't—(interrupted) [40]

Q. Well, you paid your money though?

A. I paid mine, and I know the monies were paid in at that time, but I don't remember who paid in what. I just know that we were all there together, bought our cashier's checks, and went on up to the meeting.

Q. What I am trying to say, you put enough

(Testimony of Robert T. Jacob.)

money together—you each contributed up—enough—there was four hundred thousand dollars there?

A. That's right.

Q. It was shoved across the counter, and you got these cashier's checks back?

A. That is what happened. Who had the money, all of it, nor how much, I don't recall that.

Q. Now, were you present when Mr. Bentson purchased two cashier's checks?

A. I don't recall whether I was at the window at the time or not, but I know he was—I recall his being in the lobby, and purchasing checks. I don't recall whether I was at the window at the time or not, but I remember that he was there, in the lobby at the time, with the check of ABC for the purchase of the—(interrupted)

Q. Was Mr. Davidson with him?

A. No, he was not. There was a representative of ABC there, but I don't recall who it was; but it was not Davidson, I remember.

Q. Was Mr. Davidson at the meeting?

A. No, he wasn't. [41]

Q. But some ABC representative was at the meeting?

A. Yes, that's right; that's right.

Q. Did you ever hear anything—were you present when the note was signed?

A. No, I wasn't.

Q. Did you ever hear Mr. Bentson say why he wanted to purchase into this business?

A. Yes, I did.

(Testimony of Robert T. Jacob.)

Q. What did he say?

A. He said that he had watched his nephews in their operations and they had been quite successful, and that he wanted—he had spoken to them on different occasions previously, requesting that at some time, he be permitted to acquire an interest in some of the projects they were going into, and his reasons for it was that he said he had a niece in Portland, was the only relative that he had, and he wanted to create an estate for her here in Oregon, and that is what his reason, he said, for being interested.

Q. Mr. Jacob, you had mentioned that this Oregon Motor Stages had a history of good earnings—do you know whether Mr. Bentson had been informed of that?

A. He had—he was, very definitely, and I know that he camped on Mr. Schneider's trail here for several days, in connection with the operation before he went into it, and Mr. Schneider would know exactly what was done in that respect, but I knew that he was with Mr. Schneider for quite some time before he decided finally to go [42] into it.

Q. Well, now, when did you first learn that Mr. Bentson wanted to get out of the sales of the stock?

A. Well, it was some time in the latter part of August.

Q. And how did you find that out?

A. Well, he came to Portland again, and as I recall, he came in with Barney Royce, who lived in

(Testimony of Robert T. Jacob.)

Vancouver, Washington, and said that he wanted to get out; that he had—that the end of the war had changed the prospect of matters, and he preferred to retire from the operation, dispose of his stock.

Q. Do you know whether or not he addressed some sort of a communication to the corporation or the President concerning that desire?

A. He did; he did, yes.

Mr. Jones: Mr. Picco, have you photographed that—(interrupted)

Mr. Picco: We have the original here. Of course, that is also in the stipulation. [43]

* * * * *

Q. (By Mr. Jones): I am showing you Exhibit 9—is that the communication that you referred to? A. That's right.

Q. Now, after that communication was received, what action, if any, was taken, by the— (interrupted)

A. Well, a meeting of the Board of Directors was had, and this communication was considered and acted upon, and it was voted to acquire Mr. Bentson's stock, and after—after that action, a check for three hundred and fifty thousand dollars was issued to Mr. Bentson.

Q. Did you ever see the check—that is, prior to the time it was delivered to ABC?

A. I don't recall seeing it even before or after, except photostatic copies. I had nothing to do with the writing of the check or I don't recall seeing it.

Q. I want to show you what is the stipulation

(Testimony of Robert T. Jacob.)

Exhibit number 10, and ask you if that is a photostatic copy of the check you are speaking of?

A. It is.

Q. Now, my question is, did you—did you ever see the check or have you only seen the photostatic copy of it?

A. I recall at the time that the photostat was obtained that Mr. Royce—this was after though. This was some years after the—its issuance. Mr. Royce and I went to the bank to see about getting a photostatic copy, and we found that the check was kept over on the [44] East Side, at one of the branches of the bank, and I don't believe I went over there and looked at it. If I did, I don't recall it, but I had nothing to do with the signing of it.

Q. Well, is it true then, that you have never seen—you never saw the actual check?

A. I don't recall that I ever saw it, unless I saw it in the hands of the bank which retained it after it was certified.

Q. I see, but you never saw it before it was negotiated and went back to the bank?

A. No.

Q. That is the point I wanted to keep in mind. Now, did you have any interest whatever in this three hundred and fifty shares of stock purchased by Mr. Bentson?

A. None whatsoever.

Q. Did you put up any money for any part of it?

A. Not a dollar, no, sir.

Q. Did you get any benefit out of either its purchase or sale?

(Testimony of Robert T. Jacob.)

A. If I did, I don't know what it was. I certainly can say that I got none whatsoever, actual benefit out of it. The question as to whether the stock I retained was worth more or less is one that is open to argument. I think that our stock was worth less after—even after the amount was paid over to Bentson. Certainly, the book value of the stock went down considerably, and I think, too, the earning capacity of the corporation was depleted.

Q. Did you ever have any expectation of getting any benefit out [45] of any of the shares purchased by Bentson? A. None whatsoever.

Q. In any way? A. None whatsoever.

Q. Did you have—ever have any agreement with anybody that you would get any benefit, direct or indirect out of that purchase?

A. I certainly did not.

Q. Now, when this stock was turned in by Mr. Bentson, was it cancelled? A. Yes.

Q. And the capital of the—the capital structure of the corporation, its authorized shares of—of—
(interrupted)

A. Seven hundred and fifty.

Q. —seven hundred and fifty shares of par value of a hundred was reduced to— (interrupted) A. Four hundred shares.

Q. Of a par value of a hundred?

A. Right.

Q. And those shares have never at any time been reissued? A. They had not.

Q. Was the capital changed up again?

(Testimony of Robert T. Jacob.)

A. It has been reduced successively since.

Q. Now, there were some other sums paid, I believe, by ABC to—paid to ABC by Oregon Motor Stages at the time that this redemption was made—they are mentioned in our stipulation—— (interrupted) [46]

A. Mr. Jones, there was one payment made prior—on the statement from Mr. Davidson, to Oregon Motor Stages, I believe, representing a charge for services, according to the reading of the statement, and that was charged on the books of Oregon Motor Stages as “professional services,” whereas, it was my understanding, and I thought all the time that it had been charged to Mr. Bentson—should have been charged to L. R. Bentson, but I had nothing to do with the accounting, nor the charge, but it is my understanding that it would be and that it had been charged to Bentson.

Q. When did you find out the first time that it wasn’t charged to—— (interrupted)

A. When the Revenue Agent started making his investigation of the transaction.

Q. And what did the Revenue Agent’s report show with respect to that?

A. Well, it showed it was charged on the books of Oregon Motor Stages to an expense account, instead of being charged as an account receivable to Mr. Bentson.

Q. And then what did the Revenue Agent propose doing then?

(Testimony of Robert T. Jacob.)

A. Well, he disallowed it as a deduction on the part of Oregon Motor Stages.

Q. Oregon Motor Stages conceded—(interrupted)

A. They conceded that it was erroneously deducted, and the same was true of the amount of interest which Mr. Bentson made as a stipulation—as a condition to surrendering his stock, that the [47] company pay ABC the amount of interest charged, and that was also charged to “interest expense,” erroneously so at the time,—was disallowed by the Revenue agent and admitted by the—by us that it was improperly charged.

Q. Did you know anything about that charge either at the time? A. No, I didn’t.

Q. Well, wouldn’t that—wouldn’t that have been—I don’t express any opinion one way or the other, but would that have been a proper charge under the terms of his—(interrupted)

A. To expense?

Q. Yes.

A. Well, I don’t know. I hadn’t considered it fully, and—but I assume not. I don’t know—it—it may have been, either that, or part of the cost of the stock. More likely, it would represent a cost of the stock, rather than an expense item.

Q. As far as you know, or have any knowledge of, did any of the parties I am going to name—E. Royce, B. Royce, Schneider or Niederkrome, receive any benefit in any way from the purchase by

(Testimony of Robert T. Jacob.)

Mr. Bentson of his three hundred and fifty shares?

A. Absolutely not. As far as Mr. Niederkrome is concerned, he was required by the Interstate Commerce Commission, because of his Directorship in another—another carrier, to dispose of his stock. He did so in 1946, at the identical price that he had paid for it, so it left him right in the position he was before he went into the project, and while that would be the extreme case, we got no more [48] benefit from the surrender of the three hundred and fifty shares than he did from the surrendering of his shares to another purchaser.

Q. Well, but—my question really was whether you know—(interrupted)

A. Whether they got—(interrupted)

Q. —if any of them—whether you know whether any of them got or was intended to get any benefit out of it?

A. I didn't get the word "intended," no, they didn't—they didn't intend to have any part in the purchase, or in any way, with the three hundred and fifty shares.

Q. And do you know whether or not there was any agreement that they would participate in any way, or for any benefit whatever in those three fifty shares?

A. There was absolutely no agreement that I had any knowledge of.

Q. Now, how did the earnings of Oregon Motor Stages go after the war was over?

(Testimony of Robert T. Jacob.)

A. Well, they started to decrease, and steadily decreased, from something over two million down to less than a million dollars, in gross revenue.

Q. Except, I think, there was one year, when there was a little spurt there?

A. Probably—probably there may have been one year.

Q. Now, was the redemption intended to be of any stock except these stock? I mean, Bentson's stock? [49]

A. You mean at the time of the —(interrupted)

Q. That it was made. That wasn't a redemption for any—was that a redemption for anybody else's stock—was that supposed to be a pro-rata redemption of stock?

A. Not at all. There was no—there was no—there was to be no redemption except his shares.

Q. Now, would there have been any loaning of this stock except for ABC's demands? A. No.

Q. Did either Mr. Bentson or Mr. Niederkrome have any connection with Oregon Motor Stages after each of them went out? A. No, they did not.

Mr. Jones: You may cross-examine.

Cross Examination

Q. (By Mr. Picco): Mr. Jacob, what was your position in Oregon Motor Stages in 1945?

A. Secretary.

Q. How many shares of stock did you acquire?

A. One hundred.

Q. Now, did you say on direct that as far as

(Testimony of Robert T. Jacob.)

the negotiations for the purchase of stock, that you were active in those negotiations?

A. Yes, I was.

Q. Was Ezra Royce active too?

A. Yes. [50]

Q. Was anybody else active in the negotiations?

A. You mean directly with the—with the sellers, or in what way do you mean?

Q. That is correct.

A. Directly with the sellers? I believe Mr. Schneider first contacted Mr. Jones, and then, from then on, my recollection is that the negotiations were continued by Mr. Royce and myself. I don't remember Mr. Schneider having anything to do with it—with the negotiations after that time, until we met for the purchase of the stock.

Q. Now, in the negotiations for the loan, were you active in that?

A. I introduced Messrs. Bentson and Royce to Davidson. From then on, I was not active.

Q. That is the only part you took in the negotiation for the loan?

A. Introduction, that's right.

Q. Now, in your recollection—or do you know how long these negotiations for the purchase of the stock—how long it took for the negotiations? When did you start negotiations?

A. My recollection is it would be some time in May—May, 1945, and then they continued on—be something over a month.

(Testimony of Robert T. Jacob.)

Q. I take it you had quite a few meetings and conferences in connection with that—during that period of time?

A. Quite a few; quite a few, that's right.

Q. And the negotiations lasted all the way down to [51] July 2, 1945, when the transaction took place?

A. That's right.

Q. Now, during that time, you were trying to interest some additional purchasers in the purchase of this stock?

A. Additional stock, that's right.

Q. Who did you try to interest in the purchase of the stock?

A. Those with whom there was serious consideration were A. H. Wenck of Seattle, and Lance Rothchild of San Francisco.

Q. Those are the individuals that have been associated with Mr. Royce—(interrupted)

A. Right.

Q. —in Yellow Cab Company and other ventures?

A. That's right.

Q. Now, they were anxious to buy that stock, were they not, or do you know?

A. I don't know that, Mr. Picco. I remember we discussed it with them, and at one time, I thought Mr. Wenck was going to take some of it.

Q. You, yourself, were intending to buy additional shares of stock, were you not?

A. I considered buying additional stock, yes. As a part of the second group that was being formed.

Q. Now, you—you discussed Mr. Bentson's par-

(Testimony of Robert T. Jacob.)

ticipation in the negotiations for the purchase of stock. Will you tell us how active he was in that?

A. Well, he—after—after he got the information he wanted, and after he made his purchase, he was inactive from then on. He was not active at all in the company's affairs, and neither were any of the rest of us, except Mr. Schneider, actually.

Q. When did he first become interested in the negotiations for the purchase of the stock?

A. Some time the latter part of June. I don't recall the exact date—I remember it was a Sunday. It was a Sunday evening that I went out to Mr. Royce's and met him, and it was some time in the latter part of June.

Q. Now, was he active during all of that time right down to the day of the transfer of the stock from the old stockholders to the new stockholders?

A. That's right. He remained here in Portland, as I recall it, until the transaction was closed. There may have been a lag where he went back to Vancouver, but he was active around here for quite some time, I recall. After I—after I introduced him to Mr. Davidson, I didn't see him again that I recall, until we purchased the cashier's checks and had our meeting.

Q. When do you think you introduced him to Mr. Bentson—or to Mr. Davidson of ABC?

A. Well, it would be—it would be some time in June, I don't know exactly—it would be some time the latter part of June, I will say—between the 15th and the end of the month, I would say.

(Testimony of Robert T. Jacob.)

Q. Now, did you say you knew him very well?

A. No, I hadn't met him until I met him at Mr. Royce's.

Q. Was his wife with him at the time?

A. No, she wasn't.

Q. Do you know where he stayed?

A. I believe he stayed with E. Royce. He was out at his house when I met him, and I am not sure, John, whether he stayed there all the time or not, or whether he was with Barney part of the time, or what. I know, I met him at Mr. Royce's.

Q. Did you describe Mr. Bentson. I think you were trying to describe him in your direct examination?

A. Yes, sir, he was a very good looking Scandinavian—very impressive looking, and at the time he was here, he was quite well-dressed in—I remember at the meeting particularly, he made the most impressive presentation of anybody there. He was—he sat up and took part in all the negotiations, and seemed to be enjoying it thoroughly. He was dressed in a dark suit—had on a white shirt and tie, and to me, he made a very good impression.

Q. How—was he an elderly man?

A. Yes, he was. He was along in years. I don't know how old he was. But he was certainly alert and active at the time he was there. There was no indication of anything but a very alert man.

Q. Now, this stock was desirable in a sense that profits were excellent, and it looked as if large divi-

(Testimony of Robert T. Jacob.)

dends could be obtained through the corporation, is that right?

A. They had been paying substantial dividends and certainly, the [54] earnings had that implication. We thought it would be a very profitable venture.

Q. Had Mr. Bentson stated to you, or you found out that his funds, if any, were blocked in Canada?

A. He stated at the time, that they were. That for that reason, he would have to make arrangements for financing here, if he were able to go into the project.

Q. Did he anticipate that the war restrictions would be lifted inside of three months?

A. That, I wouldn't know, John, what he anticipated.

Mr. Jones: I didn't hear that. Would you mind repeating that?

The Court: The question was, did he anticipate?

Q. Did he anticipate that the war restrictions would be removed in three months—the period of the loan? You say you don't know that?

A. No, I don't know. He didn't—nothing was said about—he just simply said his funds were blocked, and so far as the loan being for three months, my understanding was that it was renewable—all of the notes that I was familiar with that had been issued prior to that time by ABC, had been issued for ninety days, and they were renewable continuously for quite some years.

Q. Now, you are talking about the practice of ABC, or—(interrupted)

(Testimony of Robert T. Jacob.)

A. Yes, as far as—(interrupted) [55]

Q. —from your knowledge?

A. Yes, from my knowledge, yes.

Q. Now, you are not talking about this particular note, are you?

A. No, I am talking about the practice. I had—I did none of the negotiating, so I wasn't informed as to that.

Q. Did you not consider that it was rather risky to pledge your stock on the basis of his credit, under the circumstances?

A. No, I thought he was a substantial individual, and I saw no particular hazard in our surrendering our shares as collateral.

Q. Well—(interrupted)

A. As a loan to him, if you will notice, the receipt that he gave us specifically states that it is being loaned—the stock was being loaned to him for the purpose of the pledge.

Q. You didn't receive any evidence. did you, Mr. Jacob, about any financial statement showing his net worth?

A. No, I didn't get any such statement.

Q. Now, isn't it true that you pledge your stock because you knew that Mr. Ezra Royce was—was liable on that note, and that everything would be all right?

A. I don't recall that I gave any consideration to that. I don't recall giving that any thought. As a matter of fact, I don't know when ABC said that they would want this pledge, I don't recall that they

(Testimony of Robert T. Jacob.)

said that they were going to require an endorsement.

Q. You knew little about the negotiations of the loan, you have mentioned that? [56]

A. That's right.

Q. Did you know or understand that the stock would be retired shortly, and the loan paid up out of the earned surplus of the Oregon Motor Stages?

A. No, it wasn't our intention at all.

Q. Now, it is stipulated—I think it is in paragraph 34 of the stipulation—paragraph 25 of the stipulation, concerning the interest payment and the finance charges, and the invoice that you were talking about, is Exhibit C—this is it right here, isn't it?

A. That's right.

Q. Now, that was paid—can you tell by that. The invoice was dated July 17, 1945?

A. That's right.

Q. And it was stipulated that it was paid on July 19, 1945?

A. That's right.

Q. Now, you say you didn't know anything about this?

A. I—I said I thought that that was charged to—my understanding was it was to be charged to the—to Bentson. I didn't say I didn't know anything about it.

Q. Are we talking about the time of this instrument—Exhibit 9, July 17, 1945—do you know about this at that time, or are you talking about your knowledge of it now?

A. No, I knew that Royce was billed, yes. I

(Testimony of Robert T. Jacob.)

mean, I knew that the company was billed by Davidson, yes.

Q. But you don't know how it was handled? [57]

A. No, I didn't know until—(interrupted)

Q. Until later?

A. Yes. Mr. Nicholson (phonetic)—(interrupted)

* * * * *

Q. Now, you stated that George W. Davidson is now deceased. He was the Vice President, was he not, and General Manager of American Business Credit Corporation?

A. Yes, that is my understanding.

Q. You stated that George Davidson was or was not at the First National Bank at the time the transaction was closed? A. He wasn't.

Q. And you don't know anything about the negotiations of the loan, involving George Davidson's participation in it?

A. Not from the time I introduced him to Mr. —(unfinished answer)

Q. Now, isn't it true that after the stock redemption, there were less shares of stock, and consequently, an opportunity for larger dividends for the stockholders? [58]

A. No, because there was a—there was a pro-rata reduction of assets by the three hundred and fifty shares in excess of the assets remaining as outstanding against the four hundred shares. Now, as to the operating potential, I think Mr. Schneider would be—who was the Manager, would be in better

(Testimony of Robert T. Jacob.)

position to explain that arrangement, but so far as the net worth of the company was concerned, pro-rata per share, it was considerably reduced.

Q. You had a smaller group of stockholders, did you not?

A. Smaller group of stockholders, but the assets against our stock were less than they were when they were at seven hundred and fifty shares.

Q. The profits potentialities of this corporation remained constant, despite this transaction, did they not?

A. No, they started to decline, and—(interrupted)

Q. Not because of the transaction involved?

A. Well, that, it could well be, because with the additional capital, it would have been possible to have acquired additional equipment, and with additional equipment, there could have been a different operating schedule, and I would say that proportionately, there would be an operating potential which was reduced by the reduction of capital.

Q. Now, you are there assuming—assuming some statements there about the equipment, are you not?

A. About the acquisition of it? Well, I know that—no, I know that the equipment, a lot of it was antiquated, and was retired [59] and disposed of. I know that there were times when we could have used better equipment to advantage, but—I would say that would reduce the earning potential of the company.

Q. Actually, it—it took—it was a long time be-

(Testimony of Robert T. Jacob.)

fore the business dropped off on account of loss of war trade, is that right?

A. No, it dropped off the next year. The earnings for 1946 were considerably below 1945.

Q. The revenues were still in excess of a million dollars a year or so after that, were they not?

A. Yes, the one year, I think, they exceeded a million—one or so—yes, I guess two or three years, but prior to this time, the revenues were well over two million.

Q. Now, if you are—why didn't—why didn't you people, that is the Petitioners, if you please, Mr. Jacob, buy this stock of Bentson's?

A. Why did we buy it? We didn't buy it.

Q. Why didn't you buy it, rather than have the corporation—(interrupted)

A. Oh, why didn't we?

Q. That is correct.

A. Well, we didn't—we weren't interested originally in acquiring any more stock.

Q. Well, didn't you testify that you were intending to buy additional shares of stock?

A. I did, but that was only an expedient—or, if I had to in [60] order to perfect the transaction with respect to the other. If I had acquired additional shares, it would have been on the basis of retaining them.

Q. Did you people seek to get the—Mr. Wenck from Seattle and Mr. Rothchild from San Francisco to buy his stock at that time?

(Testimony of Robert T. Jacob.)

A. Buy his—Bentson's?

Q. Bentson's stock?

A. No, no; no, we did not.

Q. Now, if you had any fears of needing capital for new equipment, wouldn't that have been the way of doing it?

A. You mean to have somebody else buy the stock on the outside?

Q. The individuals you knew were anxious to buy, that you have stated were anxious to buy—Mr. Wenck and Mr. Rothchild.

A. I didn't say they were anxious. I said at one time, Mr. Wenck had expressed an intention of going ahead in the original purchase, but he backed out after Bentson came on the scene, and then, too, in the meantime, the war had ended, and the picture was utterly and entirely changed from that time on, as to the prospects for the company. It was obvious that there would be—(interrupted)

The Court: Mr. Picco, we will take a recess at this time. [61]

* * * * *

Cross Examination—(Continued)

Q. (By Mr. Picco): In any event, no effort was made at the time you were considering the offers of Mr. Bentson to have the Oregon Motor Stages take over the stock—no mention was made at that time of trying to get other purchasers for that stock, as you had originally done?

A. No effort was made, that's right.

(Testimony of Robert T. Jacob.)

Q. That wasn't considered?

A. I don't recall whether it was considered. I know no effort was made.

Q. Do you know whether Mr. Niederkrome or Mr. Schneider actually put up any money of their own?

A. I don't know that.

Q. For the purchase of the stock?

A. I don't know that, no.

Mr. Picco: That's all, your Honor. [62]

* * * * *

F. C. NIEDERKROME

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: F. C. Niederkrome—that is spelled, N-i-e-d-e-r-k-r-o-m-e.

Mr. Jones: If the Court please, at this time, I will devote my questions to the issue that the last witness was testifying on.

Direct Examination

Q. (By Mr. Jones): Mr. Niederkrome, how long have you lived in Portland?

A. Since 1916.

Q. What is your occupation?

A. Accountant for the Yellow Cab Company and Gray Line Company.

Q. And are you the Petitioner in Docket Number 51491?

A. Yes.

The Court: Speak a little louder.

Q. Now, did—(interrupted)

(Testimony of F. C. Niederkrome.)

The Court: Speak just a little louder.

Q. Did you buy fifty-five shares of the stock of Oregon Motor Stages? [63] A. Yes.

Q. Were you ever an officer or Director of that company? A. Yes, I was.

Q. From what time?

A. From July '45 until about the middle of—the latter part of June '46.

Q. How did you happen to release your stock then?

A. Well, about thirty days or sixty days before I released it—(interrupted)

Q. I can't hear you, Mr. Niederkrome.

A. About thirty days or sixty days before I released my stock, I was contacted by an agent or examiner for the Interstate Commerce Commission, and he informed me that it would be necessary to change the ownership or dispose of my stock, or relieve myself of the Directorship of one of the other companies.

Q. What other companies?

A. I was a Director in the Gray Line Company.

Q. The Gray Line Company is a transportation company?

A. It's a transportation company, and it operates on a permit with the Interstate Commerce Commission.

Q. Now, did you—how long did these discussions with the ICC last?

A. Well, they lasted probably thirty days, because I had several discussions with him.

(Testimony of F. C. Niederkrome.)

Q. All right, now, what did you do with your stock? [64]

A. Well, I finally made arrangements to sell it to Mr. A. L. Schneider.

Q. Now, were you at this meeting on the—at the bank on July 2nd, 1945, when this transaction was put together? A. Yes, I was.

Q. Now, at the time that you all went into this transaction, what was your attitude with respect to the continuation of the war?

A. Well, at that time, there was—there was nothing on the horizon which would indicate that there was going to be an immediate cessation of hostilities.

Q. And what—when the war stopped in August—when the fighting stopped in August, was there any difference—change in the outlook then?

A. Well, there was. There was—there was—an apparent notice—you could notice that there was some change taking place.

Q. No, I mean, with—in your attitude with respect to the business holding up of your company, the Oregon Motor Stages?

A. Well, I hadn't—I had that time, I hadn't been worried too much about it. I thought it was okay.

Q. Now, I am talking about the war was over, was there any different attitude then?

A. In respect to the—(interrupted)

Q. Whether your patronage would continue on the same level as it had been during the war?

(Testimony of F. C. Niederkrome.)

A. Well, it was apparent it wouldn't continue.

Q. Now, when did you first learn about Mr. Bentson's desire to sell his stock?

A. Well, I first knew about it when he submitted a letter to the Board.

Q. Were you—(interrupted)

A. With an offer.

Q. Were you at the—were you at the Oregon Motor Stages Directors' meeting when that offer was considered?

A. I think I was, yes; yes, I was.

Q. Now, if the—why was the offer accepted?

A. Well, based on all the facts at the time, we considered it to the best interest of the company to accept it.

Q. And the Oregon Motor Stages then paid this three hundred and fifty thousand dollars to Mr.—(interrupted)

A. Yes, they accepted it and paid the three hundred and fifty thousand dollars.

Q. —Bentson. Now, did you receive any part of the three hundred and fifty thousand dollars?

A. No, sir, I did not.

Q. Did anybody receive any benefit from this payment to Mr. Bentson? A. No, sir.

Q. Were you under any agreement—were there any agreements with you and the rest of them, as far as you know, whereby anybody would get any benefit from it? [66]

A. No, there was none.

(Testimony of F. C. Niederkrome.)

Q. At the time you went into it, did you expect to get any benefit because of Mr. Bentson buying the stock? A. No.

Q. This redemption was only of his stock, wasn't it? A. Of his stock.

Q. Yes. A. Only of his stock.

Q. Yes. Was there any expectation or understanding that anybody would in any way be interested in his stock?

A. Among the stockholders?

Q. Yes. A. No, I didn't know of any.

Q. Except himself? A. That's right.

Q. Now, did you realize any gain or benefit of any kind because of his selling his stock to the company?

A. No, I got—I received nothing of any kind, in the way of gains.

Q. Was your interest limited solely and exclusively to the stock you purchased?

A. To the stock I purchased.

Q. Why did you pledge your stock to Mr. Bentson—or loan it to Mr. Bentson?

A. Well, we were all interested in completing the deal, and [67] the ABC Company requested it, so I pledged my stock in order to complete the deal.

Q. Was this done only as an accommodation to Bentson? A. That's right.

Q. Have you had any connection with Oregon Motor Stages since July 20th, '46?

A. None whatsoever.

Mr. Jones: You may cross-examine. I will put

(Testimony of F. C. Niederkrome.)

a limit to this witness to this issue at this time, if it is all right, your Honor. You may cross-examine.

Cross Examination

Q. (By Mr. Picco): Mr. Niederkrome, you are related to the Petitioner, E. Royce—Ezra Royce? A. Yes.

Q. What relationship?

A. He's my brother-in-law.

Q. You purchased fifty-five shares, did you not?

A. Yes.

Q. Of the Oregon Motor Stages?

A. That's right.

Q. You were anxious to buy that stock at the time?

A. Yes, at the time, the operation looked like a mighty good deal.

Q. You anticipated——(interrupted) [68]

A. And I thought this was an opportunity to invest some money and enhance my position in future years.

Q. Now, you were—were you active in negotiations for the purchase of the stock?

A. I was—I couldn't say that I was active, but I was interested, and talked to several people, and one of them was Mr. Wenck. In fact, I had a conversation with him about the purchase of the Oregon Motor stock at my house, and he was very much interested.

Q. He was anxious to buy the stock too?

A. That was during the period of negotiation.

(Testimony of F. C. Niederkrome.)

Q. Did you say yes to my question? Was he anxious to buy the stock?

A. He was interested. In fact, I was very much surprised as I learned later that he didn't buy it.

Q. He didn't—you didn't know the reason why he didn't buy it?

A. No, I didn't know what his reason was that he—why he changed his mind.

Q. At your home, he indicated that he was very anxious to buy the stock?

A. Yes, we talked about it considerable, and he seemed to think it was a wonderful deal, which I did.

Q. Did you know of anybody else that was very much interested in buying the stock?

A. No, he's the only man outside of the stockholders that go into [69] the deal that I had any conversation, that I can remember now.

Q. Who would you say was the active member of the group—of the Petitioners here, Ezra Royce, Mr. Schneider, yourself, in negotiating for the purchase of the stock?

A. I—it was my understanding that Mr. Schneider started the negotiations and Mr. Jacob and Mr. Royce became interested in it, and——(interrupted)

Q. Would you say that Mr. Royce did the foot work? A. Well, yes, he did, considerable.

Q. He promoted the transaction?

A. For the purchase of the corporation, or the——(interrupted)

(Testimony of F. C. Niederkrome.)

Q. Of the stock?

A. Well, he was interested, and I know that Mr. Schneider was interested. Just who did the most foot work, I don't know.

Q. As far as negotiations for the loan are concerned, do you know that—whether Mr. Royce, Ezra Royce, was the one that was the most active in that?

A. No, I don't know, no, who was the most active in that.

Q. Mr. Ezra Royce is a very—has a very dominant personality, has he not?

A. Well, he's careful about his business transactions, I think.

Q. Now, he has an interest in many ventures?

A. Yes.

Q. In all of those ventures, he has the controlling stock interest, or the controlling partnership interest, does he not? [70]

A. Well, he, himself? Not necessarily.

Q. He himself or his family—members of the family?

A. No; no — his family. Who do you mean by his family?

Q. Wife? A. No.

Q. In Yellow Cab of Portland, which is a partnership—what is his interest?

A. He has a fifty per cent interest with his wife. His brother has the other fifty per cent interest.

Q. Is he the active partner?

(Testimony of F. C. Niederkrome.)

A. In the Yellow Cab? Yes.

Q. Barney Royce is out of the State, and has been for several years, has he not?

A. Yes. [71]

* * * * *

Q. (By Mr. Picco): You—did you borrow the money—any of the money for the purchase of your stock?

A. Yes.

Q. Who did you borrow it from?

Mr. Jones: I object to that as incompetent, irrelevant and immaterial. It has nothing to do with—how he got his money, or where he got it is absolutely immaterial. The fact that he borrowed it and says he borrowed it and paid for his stock is sufficient.

Mr. Picco: I believe it is very material, your Honor. One of the issues here is that Mr. Ezra Royce is the active party, and also, in the alternative, he, himself, might be the one that was interested in all this stock, and the fact that he has financed others is an indication on that and bears on it.

The Court: I believe he may answer. He may answer.

Mr. Jones: I have forgotten, your Honor, whether exceptions are saved——(interrupted)

The Court: Yes.

Mr. Jones: Thank you.

Q. (By Mr. Picco): Will you answer the question?

A. Would you repeat the question?

Q. Did you borrow the money from Ezra Royce?

(Testimony of F. C. Niederkrome.)

A. Yes.

Q. Did you give him a note? A. I did.

Q. Did you pay that note back?

A. Well, I was obliged to dispose of my stock, and in doing so, the note was cancelled.

Q. Now, when was your stock sold?

A. I think it was June 20—June 20th, or thereabouts of 1946.

Q. In the following year? A. Yes.

Q. Had any payments been made on this note up to that time?

A. Oh, I don't know whether there had been any payments made or not—whatever the situation was. I came out of it without any loss of any gain.

* * * * * [73]

Continued Cross Examination

Q. (By Mr. Picco): As I understand it, Mr. Niederkrome, you didn't know Mr. Bentson at all, did you? A. Oh, yes, I knew him.

Q. How well did you know him?

A. Well, had—I had known him for several years. He came to Portland quite often, and occasionally, on those trips, he came in the office and talked to me.

Q. You didn't know anything about his financial condition?

A. Well, I understood that he had—had some interest, or had been in the gold-mining—mining business. I didn't know whether [74] it was gold mining or silver mining.

(Testimony of F. C. Niederkrome.)

Q. You didn't know what his activity was in the negotiations for the loan or for the purchase of the stock, did you?

A. No, I wasn't. I don't recall that. I wasn't—I *don't* I ever had anything to do with the negotiations.

Q. Now, at the closing, when the stock was transferred from the old—from the former stockholders to the new stockholders, a meeting was held at the First National Bank, wasn't it?

A. Yes.

Q. Were you there? A. Yes.

Q. Now, you don't—you don't know of your own knowledge if Mr. Bentson was there?

A. Well, I am of the impression that all the prospective purchasers were there, but I can't remember that, if they were all there or not.

Q. You weren't—you are not certain of that?

A. No.

Q. Now, do you know how long he stayed?

A. Well, it lasted several hours.

Q. Well, I mean, do you know how long Mr. Bentson was during his negotiations and everything—when did he go back, do you know?

A. Oh, I can't say, because he was in Portland off and on, and lots of times he would come into the office, and then other times he wouldn't. I haven't any idea. [75]

Q. Well, during this particular time, that is June, or July, or August of 1945, do you remember

(Testimony of F. C. Niederkrome.)

any times that he came into the office, or that you saw him?

A. I can't say definitely that he came in or that he didn't.

Q. He didn't——(interrupted)

A. During—during the negotiations.

Q. Well, did you see him at all during that period of time?

A. Yes, I probably did, because I saw him a good many times.

Q. That is, he was in and out all the time during this particular period of time, in June, July and August? A. Yes.

Q. Was he there after July 2nd, 1945?

A. I don't know. I think after July 2nd, he probably went back to Vancouver.

Q. Did you see him in August of 1945?

A. It is possible, but I can't tell you definitely that I saw him.

Q. Now, did you see him in August 31st, 1945, at the time that the stockholders considered having the corporation buy the three hundred fifty shares of stock that he had?

A. I don't—I didn't—I can't tell you. I don't think so.

Q. You didn't see him then? A. No.

Q. Do you remember at the meeting, whether Mr. Jacob was there, when you were considering whether you should redeem the three hundred and fifty shares of stock? [76]

A. Well, I think he was there. A long time

(Testimony of F. C. Niederkrome.)

to remember. We certainly would have the whole Board there.

Q. Now, isn't it true that you pledged your stock as collateral for the loan, three hundred and fifty thousand dollars from American Business Corporation because the Petitioner, Ezra Royce, told you to do that?

A. No, it isn't true. I did it because the ABC wanted this additional collateral, and I pledged mine in order to preserve and to help along the deal on the purchase of that stock.

Q. I thought you said that you didn't know anything about the negotiations for the loan?

A. Well, I didn't. But I pledged my stock.

Q. Now, Mr. Ezra Royce asked you to pledge the stock, did he not?

A. We all pledged our stock. It was done because it was the requirement of ABC, that they have this as extra collateral.

Q. Now, getting back to the meeting, when you were considering this letter of August 31, 1945, from Mr. Bentson—his offer to sell the stock to the corporation—did you consider at that time having Gus Wenck of Seattle, Mr. Rothchild of San Francisco, purchase that stock, rather than have the corporation take it?

A. Well, I didn't talk to anybody, because—I didn't talk to Gus Wenck. I didn't have much opportunity to see him. I never went to Seattle at that time a great deal. It was after my time that I had spent a lot of time in Seattle, and he

(Testimony of F. C. Niederkrome.)

had turned down the—the [77] proposition in the first place, so I never discussed it with him.

Q. The matter wasn't taken up at that time?

A. Not as far as I know.

Q. Now, you said you sold your stock in 1946, because of the Interstate Commerce Commission requirement? A. Yes.

Q. Now, didn't that same requirement affect the Petitioner, Ezra Royce?

A. No, it wouldn't—when I was—sold my stock, there was no longer any interlocking control in the two companies; that is, the Gray Line Company and the Oregon Motor Stages, which were both operating under ICC permits.

Q. Now, what was your position with Oregon Motor Stages? A. I was—(interrupted)

Q. Did you have—did you hold an office?

A. I was the Director and the Treasurer, for that short period.

Q. Were you also the Accountant?

A. No, not for the Oregon Motors.

Q. As Treasurer, do you—I will hand you here Exhibit C, which is stipulated as being that invoice for George W. Davidson, who was connected with the American Business Corporation. Now, as Treasurer, did you have something to do with the payment of that voucher?

A. No, I don't believe I did.

Q. Do you remember anything about it? [78]

A. No. I would—we had a comptroller there

(Testimony of F. C. Niederkrome.)

who handled the accounts and recording of such vouchers.

* * * * *

A. L. SCHNEIDER

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: A. L. Schneider.

The Clerk: Will you spell your last name?

The Witness: S-c-h-n-e-i-d-e-r. Oak Grove, Oregon.

Direct Examination

Q. (By Mr. Jones): Mr. Schneider, you have a wife whose name is Bertha, is that correct?

A. That's correct.

Q. And you are the Petitioner in Docket 51532?

A. That is correct.

Q. And you and Mrs. Schneider are the Petitioners in Dockets—or in Docket 51533?

A. That is correct. [79]

Q. And she is the Petitioner in Docket 51534?

A. Yes, sir.

Q. Now, how long have you and Mrs. Schneider lived in or near Portland?

A. Since about the middle of 1945.

Q. Were you ever a shareholder or officer, or Director of Oregon Motor Stages? A. I was.

Q. From when to when were you interested in that company?

(Testimony of A. L. Schneider.)

A. I was interested in the Oregon Motor Stages from July of 1945 until September of 1952.

Q. Mr. Schneider, what was your position in the company?

A. I was General Manager, and——(interrupted)

Q. And did you have a corporate office?

A. Yes, I was Vice President of the company some—I believe, September of 1945 until it was sold. Until the company was sold.

Q. All right. Now, were you also a Director?

A. Yes, I was.

Q. Do you recall the negotiations that led up to the purchase of stock from Jones, Wilson and Lemon, who were the former stockholders?

A. Yes.

Q. Who was it that first learned that this stock might be purchased? [80]

A. I believe it was myself that learned that originally.

Q. And to whom did you convey the information?

A. I verified the information first and then conveyed it to Mr. E. Royce.

Q. And were you at the same time acquainted with Mr. Jacob?

A. Yes, I had been acquainted with Mr. Jacob for—oh, since probably around 1938.

Q. And did you know whether—who conveyed the information to Mr. Jacob?

A. I believe I did; I believe I did also.

(Testimony of A. L. Schneider.)

Q. And would you—did you take any part in the negotiations after your bringing it to the attention of these men—did you do any of the negotiating with Jones or Wilson or Lemon, with respect to the means and methods and payments, and so forth, of acquiring it? A. No, I did not.

Q. Who did that negotiation, did you know?

A. Mr. Royce and Mr. Jacob handled, I think, practically all the negotiations in that relation.

Q. Did you inspect the properties—assets, of Oregon Motor Stages before the purchase was made? A. I did.

Q. And it was purchased, I believe the stipulation says, on the basis of a thousand dollars a share? A. That's correct.

Q. All right. Now, how long did those negotiations stretch out [81] from the time that you first brought the matter to the attention of Mr. Royce until the meeting down at the bank?

A. Oh, I would say probably two to two and a half months.

Q. Now, did you know Mr. Bentson?

A. Yes, I didn't know him prior to—prior to this Oregon Motors deal, no.

Q. Where did you meet Mr. Bentson?

A. I met Mr. Bentson in the company of Mr. Jacob at Mr. Royce's home.

Q. Did Mr.—did you ever overhear any conversations among these men in which Mr.—at which Mr.—at which conversations Mr. Bentson took part about the acquiring of this stock?

(Testimony of A. L. Schneider.)

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(Testimony of A. L. Schneider.)

A. The only conversations that I heard relative to it was—or the first conversations, I will say, was perhaps a day or so prior to our meeting with Mr. Bentson at Mr. Royce's home. Those conversations were just to the effect that Mr. Bentson was interested in coming into the deal, and after that time, a day or two later, why, I met him, at Mr. Royce's home.

Q. Now, do you know whether Mr. Bentson ever made an inspection of the properties himself?

A. I don't know if he made any by himself. I know that he made an inspection with me over a period of two and a half days over all of the routes.

Q. Would you explain—give us the details of that, will you?

A. Well, after Mr. Bentson had become interested in obtaining [82] stock in this Oregon Motors deal, he asked me whether I would take him over the routes. I was making inspections of other various routes, as to scheduling and the depot and facilities, and I made two complete routes, or two—I made two days—in two days I made two routes, and then in one half a day, I made the following routes with him, covering down the River to Astoria, back to Seaside, and over the Sunset Highway, the following day into Forest Grove, to Tillamook, and back through Hebo, and McMinnville, and then back into Portland, and the following day, we covered the Camp Adair and Corvallis, and then drove back into Salem, and looked at the City transit lines—the transit line which was

(Testimony of A. L. Schneider.)

operating in the City, which was owned by the Oregon Motor Stages, and then came back, and took the route through Oswego and around the Lake there, and then back into Portland, which consumed—I think we got back around two o'clock in the afternoon on that.

Q. Now, did you inspect any of the bus stations and the tools and motor equipment and so forth?

A. Yes, Mr. Bentson and I also—we checked at every depot. He was very much interested in the facilities of the Oregon Motor Stages, over its routes, and he checked the—very much interested in the Camp Adair installation, and he went through the shop of the Oregon Motor Stages, at that time, we had a shop in Astoria, we had one in Forest Grove, and we had a shop in Corvallis, and we had a shop in Salem, and he also checked the facilities of the operation in Portland. [83]

Q. Do you know whether he looked over any of the records of the company? A. Yes, he did.

Q. And where did he look those over?

A. Up at the office of the Oregon Motor Stages.

Q. What records particularly did he check into?

A. Profit and loss statements, and the various statements as to operating revenue—operating ratios.

Q. And did he look—check into any of the means of handling the sale of tickets and receipt—money—of money in the various stages?

A. I believe I left him there for a couple of hours one day, and he said someone was going to

(Testimony of A. L. Schneider.)

pick him up, I believe Mr. Royce was going to pick him up later, and he stayed there for a couple of hours going over various things with the comptroller. In the stations, he merely made a cursory examination, as to how they handled things. He was interested from the standpoint of the physical end of it.

Q. Well, now, do you know whether or not, before he arrived on the scene, any attempt was made to interest other people to purchase any of the three hundred and fifty shares he eventually purchased?

A. I only know of two people that were more or less committed and were interested in it, and they are the two people—one in San Francisco, whom I had known before, and also the one in Seattle, who I had met.

Q. Can you remember their names? [84]

A. One was Gus Wenck, and the other one was Rothchild, who operates the Gray Line—not the Gray Line, but he operates the service into the—he operates the Yellow Cab in connection with the Gray Line service, I believe, in San Francisco.

Q. Now, were you at the bank meeting on July 2nd, 1946? A. Yes, I was.

Q. Prior to that meeting, did you—were you present in the main lobby of the bank where some cashier's checks were purchased? A. Yes.

Q. Did you put in any money there to buy some checks?

A. I couldn't get my check certified because it

(Testimony of A. L. Schneider.)

was on a—my money was not—hadn't been transferred into Portland, and Mr. Royce purchased the cashier's check for me, and then took—accepted my check.

Q. But you were there at the time it was done?

A. Yes, I was.

Q. And then, from the time the cashier's checks were purchased, did you go into this meeting?

A. Yes, I did.

Q. Remember who was there?

A. There was Mr. Jones and Mr. Lemon, and an attorney that they had, by the name of Frank McColloch, and Mr. E. Royce, Mr. Niederkrome, Mr. Bentson and Mr. Jacob and myself. I don't believe—I don't remember—I don't believe that B. Royce was there. I can't say for sure, but I don't remember him being there. He might have [85] been there.

Q. Was anybody there from ABC?

A. There was some man there. I didn't know him, from ABC, yes.

Q. Now, did—do you know whether or not any stock was pledged in connection with the loan made by ABC to Bentson? A. Yes.

Q. Who all pledged their stock?

A. Well, Mr. Niederkrome, and Mr. Jacob, Mr. Royce, and myself. I can't say whether Barney Royce's stock was pledged. I feel quite sure that it was, but that is hazy in my mind right now, whether he was there. I can't say for sure on that point.

(Testimony of A. L. Schneider.)

Q. Did you receive a receipt from anybody for the stock that you pledged?

A. Yes, I received a receipt from Mr. Bentson.

Q. I want to show you a receipt here. I am going to hand you the Exhibit that is numbered 6 in the stipulation, and ask you what that is?

A. That is a receipt from L. R. Bentson, for Certificate Number Seventy-six, Oregon Motor Stage stock.

Q. That was your certificate?

A. That is correct.

Q. And he gave you this at that meeting?

A. That is correct.

Q. And you endorsed your stock in blank over so that he could [86] pledge it then?

A. That is correct, yes.

Mr. Jones: I would like to read, if I may, this one receipt into the record.

The Court: Proceed.

Mr. Jones: (Reading) "Received of A. L. Schneider, Certificate Number seventy-six, dated July 2nd, 1945, for fifty shares of the common capital stock of Oregon Motor Stages, said stock being loaned to me to be pledged to American Business Credit Corporation, as collateral to this—to loan this day made to me for the purchase of three hundred and fifty shares of the capital stock of said company." Now, this receipt bears a signature of the man who made it, do you know whose signature that is? A. Yes.

Q. (By Mr. Jones): Whose?

(Testimony of A. L. Schneider.)

A. L. R. Bentson's.

Q. And he signed it and gave it to you?

A. That's correct.

Q. Did you have any interest of any kind in the three hundred and fifty shares of stock that he purchased?

A. No, I have no interest in the three hundred and fifty shares.

Q. Did you have any expectation or agreement, whereby you were going to benefit in any way through the shares he purchased? A. No.

Q. Did you ever benefit in any way by the shares he purchased? [87]

A. No, I did not.

Q. Did you ever receive—or were these—what was the outlook—I am going to start that over: What was the outlook of these purchasers, yourself in particular of course, in July, on the 2nd day, and the latter part of June, during this period of negotiations, with respect to the proposed purchase?

A. Well, basing from the past record of the Oregon Motor Stages, up to that period, and projecting it into the future, particularly based upon the theory that the war would continue for an indefinite period, and further based on the fact that it was going to be difficult to bring sufficient automobiles back into the market, and with the present growth of population which was in the west—coming to the west, it was considered an excellent opportunity for a good solid bus operation.

(Testimony of A. L. Schneider.)

Q. What portion of your business was derived from military patronage?

A. I think we could—we figured we could attribute perhaps in excess of fifty percent—attributed to the military action.

Q. From what components?

A. From the Astoria and coastal points, and from the Camp Adair points. Also, there was considerable military traffic which was being moved continuously on men on leaves and so forth, which was not a normal flow of traffic, but was traffic due to the war conditions.

Q. What was your outlook at that time—that was in the latter part of June, and up to the 2nd of July, with respect to when the war [88] would probably be over?

A. Well, of course, that was anybody's guess. We were all pessimistic as to the outcome of the war. I presume that the propaganda which was necessary under war conditions led us to believe that we had a war that was going to have long longevity, so we presumed that this would go on for quite some time.

Q. All right. Now, after hostilities ceased in August of 1945, what was your attitude toward the revenues of this company?

A. We felt that possibly, the gross revenues might decrease by—from twenty-five to fifty percent.

Q. What actually happened?

A. The gross revenues, with the exception of

(Testimony of A. L. Schneider.)

1947, did start to decrease. In 1947, they reactivated Camp Adair, and bringing the soldiers back, releasing them through that particular point, built our revenue back up to a higher point than they had previously, but from that point on, the revenues started to decrease, until, from two million four hundred thousand dollars, in that round figure, decreased to approximately nine hundred thousand dollars, which was greater than our anticipation—or our figures would be on.

* * * * *

Q. From what—did you receive any communication from Mr. [89] Bentson?

A. I didn't personally, no. The company did.

Q. Were you present at a Board meeting, when that was considered? A. Yes, I was.

Q. Had you ever talked to Mr. Bentson personally about the general subject matter of that communication?

A. Mr. Bentson—I talked to Mr. Bentson, I think, one or two days prior to the meetings we had.

Q. And what—do you know what his—did he reflect his attitude in that conversation about the future operations of the company?

Mr. Picco: I object to that testimony—statements from a decedent person, your Honor, on something that is not in issue.

The Court: Restate that question.

Mr. Jones: You sustained the objection?

The Court: Restate the question.

Mr. Picco: Restate the question.

(Testimony of A. L. Schneider.)

Q. Oh, what was stated by Mr. Bentson?

A. I mean, was there an objection?

Q. No. A. I'm sorry.

Q. I was asked to restate the question.

A. Mr. Bentson just stated that he felt the cessation of hostilities, the end of the war, was going to affect the business, and asked me what my opinion was, and I told him, frankly, that it certainly [90] would affect the overall picture, and he felt that he would much rather be out of the—as a holder of stock in the company, and said that he had written this letter to the corporation.

Q. And you were present then, you said, at the meeting, where the letter came up for consideration? A. Yes, I was.

Q. And then we have stipulated the record into the stipulation, so I won't go on with that. Now, did you—the stock was purchased, was it not?

A. It was.

Q. And a check of the company was issued?

A. That's correct.

Q. To Mr. Bentson? A. That's correct.

Q. Now, his stock was then cancelled on the records of the company? A. Correct.

Q. Now, did you receive any gain yourself from that transaction? A. I did not.

Q. Did you expect to—was it intended that you should receive any gain yourself from it?

A. No.

Q. Was any of the other stockholders, except yourself, to get any gain from that transaction?

(Testimony of A. L. Schneider.)

A. I don't see how they could. Not to my knowledge—there [91] wasn't any way they could get any gain.

Q. Did they get any gain? A. No.

Q. By the way, did you ever hear Mr. Bentson say anything about why it was necessary for him to borrow money in the United States?

A. At our first meeting with Mr. Bentson, he frankly stated that his finances were tied up in Canada—embargo of some kind, moving money from Canada into the United States, and that was the only reason that I can remember that he mentioned about.

Q. Now, did he take any part in that meeting down at the bank there on July 2nd?

A. He takes the same part as anybody else did. He was part of the overall picture in it.

Q. Was he there during the entire part of the meeting? A. Oh, yes; yes, he was.

Q. Did you receive any part of the sums paid by—paid to Mr. Bentson or to ABC?

A. No, I didn't receive any of it.

Q. Did any of the other stockholders receive any of it, so far as you know?

A. No, the check went back to Bentson, and I understand he endorsed it over to the ABC.

Q. No other stock was redeemed at that time, was there? A. No. [92]

Q. Was any intended to be redeemed other than his? A. No, there wasn't.

Q. Or cancelled out?

(Testimony of A. L. Schneider.)

A. No, there wasn't; there wasn't.

Q. Did you ever have any interest of any kind in Mr. Bentson's three hundred and fifty shares?

A. No, I had no interest in it.

Q. Did any of the others have any interest in it?

A. No, they didn't.

Q. Now, you were the Manager of that company at the time of the redemption, were you not?

A. Yes, I was.

Q. There was, on—when did you start to be the Manager? A. In July the 2nd, 1945.

Q. All right, there was an item represented by an invoice, made by Mr. Davidson—item which is Exhibit C, and it was paid by the Oregon Motor Stages, was it not? Do you know about that?

A. I don't know what Exhibit C is.

Q. Here is an Exhibit C, on the stipulation of an invoice from Mr. Davidson—do you know how that was handled on the—on the Oregon Motor Stage books?

A. (After examining Exhibit) No, I don't. That was—there is an account number there, but I don't know what that account number—what that account number is. I presume—I presume that this was—
(interrupted) [93]

The Court: We don't wish speculations.

Mr. Jones: What was that?

A. I couldn't tell.

Mr. Picco: If he doesn't know, don't testify.

Q. If you don't know— (interrupted)

(Testimony of A. L. Schneider.)

A. No, I don't know how that was handled—I don't know what that account number 4620 is.

Mr. Jones: All right. You may cross examine.

A. I want to make one correction in my testimony. I said that I gave Mr. Royce a check that day. I believe it was several days later, because we were in a hurry in the bank that day, and I can't remember whether I gave him a check, or I paid him a few days later on that or not. I remember we were in a hurry that day. I testified, to clarify myself, that I gave him a check that day, and then he took—he took my check and certified his own check for the stock, but as I recollect now, I believe it was maybe a few days later that I gave him the check. I don't know if it was right at that time, and I want to clarify that, because I am not quite certain.

Cross Examination

Q. (By Mr. Picco): Well, on that—on that subject, you borrowed the money to buy the stock from the Petitioner, Ezra Royce, at that time?

A. No. I didn't borrow the money. In other words, he accommodated me for a day or a few days there, until I could—could take care of the money.

Q. You later picked up the stock of Mr. Niederkrome?

A. That is correct.

Q. In 1946?

A. That is correct.

Q. Did you pay for that stock?

A. I paid partially for it. It never was paid in full, and when we liquidated the organization, why, we made our adjustments.

(Testimony of A. L. Schneider.)

Q. You mean you paid only a part for it?

A. That's correct.

Q. Did you give a note or something for that?

A. Yes, I believe I had a note on that, for the amount.

Q. Was the note ever cancelled? A. Yes.

Q. You paid up the note?

A. No, the note wasn't paid up in full. But when we—when the corporation was liquidated, why, we made our offsets on it, and Mr. Royce—in other words, when we divided up the—in the liquidation, why, there was an offset made for that, between ourselves.

Q. Wasn't that a little unusual way of settling up that account?

A. No, I don't think so. It was—it was just a matter of—of figuring out where you stood on any particular item. I don't think it was unusual. It would be one way if he would pay me, and then I would pay him back—would be the same thing—was a matter of where—where we broke even on the transaction.

Q. You and Mr. Niederkrome were in on quite a few of these [95] ventures, were you not? Together?

A. No. I never was in—as far as I know, that is the first time that I had been—ever been associated in any deal with Mr. Niederkrome.

Q. You were associated with Mr. Royce on other occasions?

A. Yes, I was. There might have been some other—some other deal that we were associated, but

(Testimony of A. L. Schneider.)

I can't remember anything of any importance, at least.

Q. Now, you stated that on or about July 2, 1945, you and the other Petitioners in these proceedings presumed that the war would go on for a long time—that is correct, isn't it? A. Yes.

Q. Just how long did you think the war was going to continue?

A. Well, we were doing a lot of second-guessing, like anyone else. Somebody thought it would go on for a year, some people thought two years, and I suppose you could balance them all up, why, probably a year and a half, two years, they thought it would go on, because they figured that it would take a long time to drive the Japs out of these holdings that they had taken over.

Q. The German war had ended, had it not, some time before that? A. That's correct, yes.

Q. Now, you mentioned that the revenues started to go down after the soldiers started to go home. Now, that was some time after that, wasn't it? In '46? [96]

A. Well, your revenues—your revenues declined in '46. There was an immediate effect—immediate effect on your overall traffic.

Q. The gross revenues for 1945 were excellent, weren't they?

A. '45, as I remember, around two million four hundred thousand, or, I am guessing at the odd figures on that.

(Testimony of A. L. Schneider.)

Q. Then the revenues for 1946 started to decrease? A. Yes, they did.

Q. They were substantially in excess of a million dollars, however, even in 1946, weren't they?

A. Yes, they were.

Q. And then there was a pick up after that, wasn't there?

A. Then in 1947 there was a pick up.

Q. Now, you mentioned also that Mr. Bentson indicated that there were war restrictions on his funds, and that was the reason why he didn't have any money?

A. He said there was an embargo on moving any monies out of Canada into the United States.

Q. You also felt that the war might last a long time, did you not?

A. We felt that it would probably last, as I stated—— (interrupted)

Q. Weren't you rather worried about pledging your stock under those circumstances—that if he wasn't able to pay it, you might lose your stock?

A. It was my understanding that—that the notes of—the note that Mr. Bentson had, was a renewable—in other words, he could continue that on.

Q. Where did you get that understanding?

A. I understood that from Mr. Jacob and Mr. Royce.

Q. Did you see the note?

A. It was a ninety-day note, as I remember, and they stated that it could be renewed from time to time.

(Testimony of A. L. Schneider.)

Q. You did know that the note was signed by Mr. Royce—Ezra Royce, did you not?

A. I understood that they had to have an endorser from the United States—citizen of the United States endorse it, yes.

Q. Now, is that reason perhaps why you didn't—you weren't worried about whether the war restrictions would be lifted or not, on Mr. Bentson's funds?

A. No, I felt this way about it, that if the same tempo of earnings of Oregon Motor Stages would continue as they had, that Mr. Bentson would have been able to make substantial payments on the note, and insofar as the balance of it was concerned, I—we at all times, our group in Portland had the control of the corporation, so we were in position—we were not in too much danger, I didn't feel.

Q. It was possible to do exactly what was done—to buy up—to have the corporation use the earned surplus to buy up the stock, too, wasn't it? [98]

A. That was one possibility, but if the—if the note was reduced by earnings that Mr. Bentson would receive, it would be down to a point where the danger—wouldn't be any danger in it. That is the way I felt about it personally. I don't know how the rest of them felt.

Q. You also stated that you talked to Mr. Bentson concerning his attitude about the war, did you not?

A. His attitude about the war? I talked to Mr. Bentson after the—after the war was over.

(Testimony of A. L. Schneider.)

Q. Before—I am trying to get back to your direct examination. I thought you testified that some time around August 31, 1945, that is when he—that Mr. Bentson submitted his letter offering to sell the stock to the corporation. The matter of attitude about the war came up, and you said you saw him about that about that time, is that correct?

A. That is correct, yes. Or a day or two—right around that time.

Q. Are you saying that he was around here August 31, 1945?

A. I think it was shortly before that, or I can't remember exactly. I know that prior to—after the war was over, he was—I saw him after that.

Q. Well, the war was over at what time? When? You mean the war with Japan? A. Yes.

Q. That was over in August some time? [99]

A. It was over in August some time, as I remember, yes.

Q. And you saw him after that?

A. Yes, I did.

Q. Now, you also stated that you conducted some surveys on the routes of Oregon Motor Stages, that was before the stock was ever bought, with Mr. Bentson?

A. Yes, that was—oh, perhaps a couple of weeks before. I don't know exactly the date on it. It has been quite a while.

Q. You stated it was around June 15, or June 20 of 1945?

A. It could have been around in that period.

(Testimony of A. L. Schneider.)

Prior—a week or two before, as I remember, before the transaction was completed.

Q. Was he here for a long time during that time?

A. It seemed like he was here at that time for about a week. He might have been here longer. I can't say, but I saw him there—I went back to Medford for a few days in between each of these meetings. I had the business down there, and I had to—I'd go back and forth, and he might have been here longer than that, I can't say.

Q. Where did you say you met him originally?

A. I met him at the home of Mr. E. Royce.

Q. Do you know where he was staying? Mr. Bentson was staying?

A. Well, the night that we were out there, he was staying at Mr. E. Royce's home that night.

Q. Was his wife along with him? [100]

A. If—I don't think so. If she was, I didn't meet her. I never did meet Mrs. Bentson, that I can remember.

Q. From your knowledge then, you—you say that he was around for about two weeks up to July 2nd, 1945? He was—— (interrupted)

A. Well, to my knowledge—to my knowledge on that particular trip, I'd say he was here for a week to my knowledge. I said—what I said, he could have been here longer, because I left for Medford and back, I couldn't say that.

Q. Now, from your knowledge, when—he was here on July 2, 1945, also, wasn't he?

(Testimony of A. L. Schneider.)

A. Yes, he was here then.

Q. And later?

A. Yes, I believe I saw him after that.

Q. Was he—did you see him at the end—during July, the middle of July?

A. I can remember—I can remember at least one time, Mr. Bentson dropping into the office, after the meeting on July the 2nd, and I don't know, it might have been a couple of weeks later; it might have been towards the end of July. I remember one time him coming into the office, one afternoon.

Q. Now, what about August, was he around Portland in August?

A. He was in August—he was in Portland one time in August too.

Q. That is—— (interrupted) [101]

A. That was the latter part of August, I believe.

Q. Was that when he talked to you about his attitude about the war?

A. Yes, I believe it was—that was the time.

Q. And as far as you know, when did he leave to go back, or did he go back to Vancouver, British Columbia?

A. Oh, I don't know; I don't know about that. I saw Mr. Bentson—he dropped in once or twice after—after he had sold his stock too, that I remember.

Q. You mean around—right after July 2nd—I mean, after September 6th?

A. Yes, I mean, maybe a month later, or something like that.

(Testimony of A. L. Schneider.)

Q. He was in town again?

A. Yes, he—I guess he came to town quite often.

Q. Do you remember whether he came with his wife at all?

A. I never did meet his wife. That I can remember.

Q. Mr. Bentson was a rather elderly old man, wasn't he?

A. Yes. I don't know, I kind of judged him at about—I wouldn't—getting to the point where I don't call that elderly. I thought he was around sixty-five, somewhere around that age. That's my guess.

Q. Now, what was the purpose of the corporation redeeming the three hundred and fifty shares of stock?

A. What was the purpose of it? He made this—he made this offer to sell it back to the corporation. We had had a reserve [102] which we felt that we were going to expend, and purchase some new equipment. We had purchased, just prior to our buying the stock of the corporation, we had obtained some new equipment, and we felt that it was going to be necessary to get—if the tempo of the flow of traffic would continue, to purchase additional equipment. With the theory that the traffic would diminish, we felt that it wasn't going to be necessary to go out and purchase additional equipment. We had considerable equipment that would—could—would be necessary to trade it in, because it would not be standard for civilian traffic, as it were.

(Testimony of A. L. Schneider.)

And we thought with the decrease in traffic that it would be quite some time before it would be necessary for us to add additional equipment to the fleet, therefore, we did have the money to purchase this stock, and which we did, and retired it.

Q. And you had intentions to maintain your volume of business, did you not? A. Pardon?

Q. You had intentions at that time to maintain your volume of business?

A. No, we—we were afraid of the fact that we wouldn't be able to maintain the volume of—the volume we did. We had to take more or less the records that we had prior to the war, and figure that it would reach its level.

Q. You were planning to service the people who wanted to use the routes, and those buses of yours, were you not?

A. Oh, yes, we were planning on services, that is the only way [103] you can hold your business.

Q. And your capital was sufficient to take care of all of that?

A. Our capital? No, I said our equipment was—— (interrupted)

Q. Your equipment was sufficient to take care of it?

A. Yes, our equipment was sufficient to take care of it. In other words, there was more equipment available to the public at the end of the war than there was available to the public prior to the war. By having the equipment during the period of the war, we had more equipment available to that

(Testimony of A. L. Schneider.)

same public that was going to ride at the end of the war than we had prior to the war.

Q. Of course, some of your buses weren't streamlined, or anything like that, were they?

A. The last twenty buses that were put into service, which were thirty-four passenger Aero coaches, and twenty-nine passenger Clippers were all streamlined buses. Then, those that were purchased prior to that time—in fact, the whole fleet was made up of Clippers which is a twenty-nine passenger bus, for your sparsely-settled runs, and the Aero coaches. Then, we had, in addition to that, considerable what we call junk. I mean, you call that junk in the open market as far as hauling passengers is concerned. We had a lot of school bus types, which we felt were available for trade-in and for sale—couldn't be used.

Q. At the time of considering Mr. Bentson's letter of August 31, 1945—his offer to sell the stock to the corporation, did you consider the matter of selling—of trying to get interested buyers in [104] to buy his stock?

A. I only talked to one person regarding it, and it was a man that had been interested before, and he told me that he had—that he had been advised to not invest in any short-line bus line.

Q. The—as far as the Directors were concerned, that matter wasn't considered at all, was it?

A. I don't know that they—that any of the rest of them approached anyone or not. I just ap-

(Testimony of A. L. Schneider.)

proached this one man—who was transportation minded.

Q. Who was that individual?

A. Mr. Rothchild.

* * * * *

EZRA ROYCE

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Ezra Royce.

Direct Examination [105]

Q. (By Mr. Jones): Mr. Royce—— (interrupted)

A. 628 N. W. 6th Avenue, Portland, Oregon.

Q. I take it you just gave your address to the—— (interrupted) A. Yes.

Q. Mr. Royce, your wife is Dora F. Royce, is that correct? A. That's correct.

Q. And you and Dora F. Royce, your wife, are the Petitioners in Docket Number 51526?

A. I don't know as I recognize that number.

Q. Well, we will stipulate that that is correct, is that right, Mr. Picco?

Mr. Picco: That is correct.

Q. Okay, and that you are the Petitioner alone in Docket Number 51527, the other docket, is that correct?

A. I don't know the number—— (interrupted)

The Court: He doesn't know the number.

(Testimony of Ezra Royce.)

Q. You will stipulate to that, Mr. Picco?

Mr. Picco: (Affirmative nod.)

A. I don't have those numbers in my mind.

Q. Thank you. How long have you and Mrs. Royce resided in Portland?

A. Well, I have lived in Portland since 1904. It is fifty-one years.

Q. And—— (interrupted) [106]

A. And she, since 1920, about thirty-five years.

Q. You were married in 1923? A. 1923.

Q. Mr. Royce, do you—did you and Mr. B. Royce, your brother, Mr. Schneider, Mr. Niederkrome and Mr. Jacob enter into a sale—purchase and sale of where you all bought four hundred shares of the stock of Oregon Motor Stages on the 2nd day of July, 1945? A. Yes, we did.

Q. Now, will you—did you have anything to do with the negotiations that led up to the purchase of that stock? A. Yes, I did.

Q. Who first brought that to your attention?

A. Mr. Schneider.

Q. All right, will you tell us what was done with respect to your negotiations for that—acquiring that?

A. Well, when I first heard about it, I thought it over a few days, and then I got on the telephone to Mr. Ackerman (phonetic).

Q. Who is Mr. Ackerman?

A. He is the President of Greyhound.

Q. Continue, please?

A. Asking him if he would like to participate in

(Testimony of Ezra Royce.)

it. He said he thought they would be interested. Then we talked back and forth on the telephone, oh, probably eight or ten times in the next three or four days, and finally, turned her down. [107]

Q. And then what, Mr. Royce?

A. Then a little later, I talked to Mr. Rothchild about it.

Q. Is he the gentleman from San Francisco?

A. Yes, and also took a trip to Seattle, and talked to Mr. Wenck about it.

Q. All right, and then?

A. Mr. Wenck came down and spent two or three days here, and then he finally—— (interrupted)

Q. Then he what?

A. He finally——turned it down.

Q. And then what did you do?

A. Then we——Mr. Bentson came down from Vancouver. On one of his periodical visits, and I was telling him about it. The idea seemed to appeal to him, so he became interested, and we finally consummated a deal with—— (interrupted)

Q. Well, had you talked to Mr. Jacob or Mr. Niederkrome or Mr. Schneider prior to Mr. Bentson coming down?

A. Oh, yes. A good many times, yes.

Q. All right. How many shares of stock had collectively——had you and Mr. Jacob, Mr. Niederkrome, Mr. Schneider and your brother agreed to buy before the time Mr. Bentson arrived?

A. Four hundred.

(Testimony of Ezra Royce.)

Q. And what was your idea with respect to the other three hundred and fifty?

A. Well, we thought that four hundred was all we were interested [108] in, and so when Mr. Bentson came along, he seemed to be interested in the other three hundred and fifty.

Q. And then what—did you tell—did you tell anybody about that—his desire there?

A. Of our group?

Q. Yes. A. Oh, yes.

Q. You conveyed it to the rest of them?

A. Oh, yes.

Q. And did you arrange for them to meet him?

A. I believe the—Mr. Jacob and Mr. Schneider came out to my house and met him there.

Q. Was that discussed at your house?

A. Yes.

Q. After this meeting and discussion, was he accepted into your group as one of the buyers then?

A. Yes, he was.

Q. All right. Now, had you ever visited in Vancouver—visited Mr. Bentson in Vancouver?

A. Oh, yes, many times.

Q. What relation are you to Mr. Bentson?

A. He was my uncle.

Q. And do you have a sister living here in town—or did you have? A. No. [109]

Q. Well, who was the niece that he had here?

A. I have forgotten her name. I know her married name, but her single name I don't recall it. Her married name is Mrs. Orsen.

(Testimony of Ezra Royce.)

it. He said he thought they would be interested. Then we talked back and forth on the telephone, oh, probably eight or ten times in the next three or four days, and finally, turned her down. [107]

Q. And then what, Mr. Royce?

A. Then a little later, I talked to Mr. Rothchild about it.

Q. Is he the gentleman from San Francisco?

A. Yes, and also took a trip to Seattle, and talked to Mr. Wenck about it.

Q. All right, and then?

A. Mr. Wenck came down and spent two or three days here, and then he finally—— (interrupted)

Q. Then he what?

A. He finally——turned it down.

Q. And then what did you do?

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Q. Well, had you talked to Mr. Jacob or Mr. Niederkrome or Mr. Schneider prior to Mr. Bentson coming down?

A. Oh, yes. A good many times, yes.

Q. All right. How many shares of stock had collectively——had you and Mr. Jacob, Mr. Niederkrome, Mr. Schneider and your brother agreed to buy before the time Mr. Bentson arrived?

A. Four hundred.

(Testimony of Ezra Royce.)

Q. And what was your idea with respect to the other three hundred and fifty?

A. Well, we thought that four hundred was all we were interested [108] in, and so when Mr. Bentson came along, he seemed to be interested in the other three hundred and fifty.

Q. And then what—did you tell—did you tell anybody about that—his desire there?

A. Of our group?

Q. Yes. A. Oh, yes.

Q. You conveyed it to the rest of them?

A. Oh, yes.

Q. And did you arrange for them to meet him?

A. I believe the—Mr. Jacob and Mr. Schneider came out to my house and met him there.

Q. Was that discussed at your house?

A. Yes.

Q. After this meeting and discussion, was he accepted into your group as one of the buyers then?

A. Yes, he was.

Q. All right. Now, had you ever visited in Vancouver—visited Mr. Bentson in Vancouver?

A. Oh, yes, many times.

Q. What relation are you to Mr. Bentson?

A. He was my uncle.

Q. And do you have a sister living here in town—or did you have? A. No. [109]

Q. Well, who was the niece that he had here?

A. I have forgotten her name. I know her married name, but her single name I don't recall it. Her married name is Mrs. Orsen.

(Testimony of Ezra Royce.)

Q. Well, what—what means did Mr. Bentson have?

A. Well, he was—he was a man that had been pretty well off for a good many years, and made his money in mining on the beach at Nome, in about 1902 or 3, along in there. Made several hundred thousand dollars in just a few weeks, so then he came out and decided he wanted to live in Vancouver, due more or less to his wife. I think she had a brother or two that lived in Vancouver. Went into the sawmill business there.

* * * * *

Q. Had there ever been any conversations between you and Mr. Bentson prior to June or July of 1945, with respect to his going into any business in the United States? A. Yes, there had been.

Q. Would you explain?

A. Several times, he indicated to me that he would like to get into something that Barney and I were interested in. [110]

Q. Now, how did you happen to mention this particular opportunity to Mr. Bentson?

A. Well, he was down here on a visit, and just casual conversation first. And he seemed to be interested, so that is how—— (interrupted)

Q. Said he wanted to go into it? A. Yes.

Q. All right, now, I want to clear up this one point that I don't think I quite understand—maybe the rest do, but I don't. Did he have a niece here?

A. Yes.

Q. What relation was she to you?

(Testimony of Ezra Royce.)

A. None.

Q. Well, I got that a little bit—that's all right. I will not ask any more questions. Now, did he indicate why he wanted to go into this particular venture here in Portland?

A. Well, he—after he investigated this pretty thoroughly, and he thought it was a good business deal, and he would like to create an estate here in Oregon for his niece.

Q. How did it come that this loan was made, of three hundred and fifty thousand from American Business Credit Corporation?

A. Well, his funds were frozen in Canada due to the war, I think, and of course he couldn't get any money out of Canada. Therefore, he wanted to make some kind of an arrangement here in the States to handle it. That is how the loan matter came up.

Q. And how was that arranged?

A. It was arranged through the American Business—ABC, I guess, they call it, through a Mr. Davidson. Mr. Jacob introduced Mr. Davidson to Mr. Bentson and myself.

Q. Now, who made the application for the loan?

A. He did.

Q. Who do you mean by "he"?

A. Mr. Bentson.

Q. What was—what were the requirements of American Business Credit Corporation with respect to making the loan?

A. Well, they wanted—they wanted somebody to sign on his note.

(Testimony of Ezra Royce.)

Q. In what capacity?

A. Well, I signed it as an accommodation to him.

Q. Did they understand that when you signed it?

A. Yes, they did.

Q. I will show you the Exhibit—this will be the Stipulation Exhibit Number 1—is the note to which you refer (note exhibited)?

A. That's right.

Q. That is a promissory note for three hundred and fifty thousand dollars?

A. That's correct. [112]

* * * * *

Q. Now, did — what other requirements did American Business Credit Corporation impose on this?

A. Well, they wanted—they wanted the group of us to put our stock up as collateral.

Q. Was that done? A. That was done.

Q. Now, did you loan this stock to Mr. Bentson for that purpose? A. Yes.

Q. Did you get a receipt from him?

A. Yes.

Q. I will show you a receipt here, which is the Stipulation Exhibit 3, I believe—it's 3—it looks like a 3 on there in pencil, and ask you to look at it, and tell me if that is the—the receipt that he gave you?

A. That is the receipt. That is the original receipt, yes, sir.

Q. All of the original group, that is, yourself, your brother, Barney Royce, Mr. Jacob, Mr. Nie-

(Testimony of Ezra Royce.)

derkrome and Mr. Schneider signed identical receipts?

A. They each had identical receipts, yes.

The Court: Do you have any interest in the ABC?

The Witness: No; no.

The Court: Did any of your associates?

The Witness: No, until I met Mr. Davidson through Mr. Jacob—it was brand new to me.

Q. Now, were you at that meeting down at the First National [113] Bank, where this purchase and sale was concluded? A. Yes, I was.

Q. That is on July 2nd of '45?

A. That's right.

Q. Now, did you have any interest at all in the three hundred and fifty shares of stock that was purchased by Mr. Bentson?

A. No, I did not.

Q. Were they in any way purchased for you?

A. No.

Q. Were they purchased for the benefit of any of the other men whom I have mentioned, who are Petitioners here? A. No, they were not.

Q. Now, what was your attitude, Mr. Royce, at the time—in the latter part of June of 1945 up to and including the time this sale was consummated on the 2nd of July '45—what was your attitude toward the probable earnings of the company?

A. Well, I thought the earnings of the company should be very good, especially if the war held on.

(Testimony of Ezra Royce.)

Q. Had you examined its past balance sheets and so forth? A. Oh, yes, I had.

Q. And what was your feeling toward the probable duration of the war at that time?

A. Well, I felt that it probably would continue on for a year or possibly two years.

Q. Now, in August of 1945, when the hostilities stopped, was there [114] any change in attitude on your part toward the progress the company could make?

A. Yes. I felt that we were—in losing that military business, it would be a considerable amount.

Q. And—— (interrupted)

A. Which it did prove to be.

Q. Now, do you know—did you talk with Mr. Bentson about the change in the international picture at that time? A. After the war?

Q. Yes.

A. I don't—recall—it seemed to me that it was here—whether I talked to him just at that time or not, I don't know.

Q. Well, in the latter part of August—I will put it this way—strike that. May I see the Exhibit 9—do I have that, or do you? I am handing you what is Stipulation Exhibit 9, a letter from Mr. Bentson to Oregon Motor Stages. Do you recall being at a Directors' and Stockholders' meeting of Oregon Motor Stages when that was submitted and acted on? A. Yes, I do.

Q. Do you know whether, at any time prior to

(Testimony of Ezra Royce.)

that, can you recall when you talked to Mr. Bentson, about the subject matter that is in that letter?

A. About the—his selling his stock?

Q. Yes, sir.

A. No, I don't think so. [115]

Q. Well, did he ever express to you at any time his reason for wanting to sell the stock?

A. Yes, he did.

Q. What did he say?

A. Well, one reason was that the war stopped, and that worried him a little bit, thinking that possibly, the volume of business would drop off considerable. And the other was that he had just discovered that his wife had developed cancer of the throat, and which disturbed him a lot.

Q. Did he ask the corporation to buy his stock?

A. Well, he offered it to them, and due to the fact that the—that the emergency for new equipment and so on and so forth was passed then, due to—on account of the war's ending is the reason we decided it would be to the best interests of the company to do it.

Q. And the corporation voted to do that?

A. Yes.

Q. And did that include cancelling the stock too, of his? A. Cancelling his stock, right.

Q. That check was written by Oregon Motor Stages, which would be Stipulation Exhibit Number 10, for three hundred and fifty thousand, dated September the 6th, 1945, did you ever see the check—the original of that check?

(Testimony of Ezra Royce.)

A. No, I don't think so.

Q. Did you ever get any benefit out of that check yourself? A. None at all. [116]

Q. Did any part of it go to you or to any of the other stockholders?

A. Not to my knowledge, no.

Q. Did any of it—none of it went to you, did it?

A. No; none.

Q. I will take this. Now, did you get any gain—realize any gain of any kind out of his selling that stock and having it cancelled?

A. No, I did not.

Q. Did any of the others? A. No.

Q. Was it intended that you or the others get any gain? A. No.

Q. Did you expect to get any gain out of it?

A. I did not.

Q. Was there any agreement of any kind that you or any of the other stockholders would realize any gain out of that transaction? A. No.

Q. By the way, did he say anything to you about the time he showed an interest in this thing—well, I believe you have testified about his funds in Canada, didn't you? A. Yes.

Q. Now, how did you people come to loan this stock? A. Well, the ABC wanted it.

Q. Did you ever—at any time, in any way, ever express to ABC that this loan was for your benefit?

A. No, I did not.

Q. How did you happen to sign that note—what

(Testimony of Ezra Royce.)

was the explanation that ABC gave to you for wanting you on that note?

A. Well, I guess they thought it would make it look better.

Q. No, but what—did they give you any reason for asking you—why they wanted your signature on it?

A. I don't recall, except that they wanted a signer. Is the only thing I know.

Q. Was there anything mentioned by anybody about him being a Canadian citizen at the time?

A. Oh, yes; I think—I didn't think of that phase of it.

The Court: I can't hear you.

A. Yes, his being a Canadian citizen—that was the reason.

Q. But I believe you said that you—that they understood you were signing as an accommodation, Mr. Royce?

A. That is correct, yes.

Q. When did Mr. Bentson die?

A. I believe it was either in late '51 or early '52.

Q. Has either Mr. Niederkrome or Mr. Bentson had any interest in or connection with Oregon Motor Stages since they each parted with their stock?

A. They have not.

Q. Now, this redemption that was made was only of his own stock, wasn't it?

A. That's right. [118]

Q. It was not intended that any other stock be redeemed at the time?

A. No.

(Testimony of Ezra Royce.)

Q. Redemption wasn't for your benefit or for the other—— (interrupted)

A. Not at all, no.

The Court: How old was Mr. Bentson, at that time?

A. I believe when he passed away, he was eighty-one years old, but up until the last year, he was a man that looked much younger. To see him you would—well, he was very active. The last year he failed rapidly.

Q. Mr. Royce, did any part of the three hundred and fifty shares he purchased belong to you?

A. No.

Q. Did you have any interest in them?

A. None at all.

Mr. Jones: You may cross examine.

Cross Examination

Q. (By Mr. Picco): Mr. Royce, in negotiating for the purchase of the stock in Oregon Motor Stages, you were the principal organizer and promoter, were you not?

A. Well, I don't—don't know as I was. I think Mr. Schneider and Mr. Jacob were about as active in it as myself.

Q. You were very active in the—— (interrupted) [119]

A. They were about as active.

Q. And you were successful in getting other purchasers for the stock, who were interested in

(Testimony of Ezra Royce.)

buying, prior to the time Mr. Bentson came on the scene?

A. Well, there was Mr. Jacob, Mr. Schneider and myself, and my brother and Mr. Niederkrome. That was the size of it.

Q. You said that—— (interrupted)

A. Rather a close knit group, I would say.

Q. You did contact Mr. Rothchild and Mr. Wenck?

A. Yes, I did, and also Mr. Ackerman.

Q. And they were interested in buying at the time, were they not?

A. Well, they were—they seemed to be interested, but they turned it down.

Q. They were interested—they—they had been in other ventures with you, had they not, Mr. Rothchild?

A. Mr. Rothchild is a part owner of the Yellow Cab Company of Seattle. That was the only connection we had.

Q. Mr. Gus Wenck was—— (interrupted)

A. Mr. Gus Wenck is the Manager of the Yellow Cab Company of Seattle.

Q. How do you spell Wenck?

A. W-e-n-c-k.

Q. Now, did you hear Mr. Jacob testify this morning? A. Yes. [120]

Q. He stated that he was willing to buy additional shares beyond the allotted portion that was given to him.

A. I heard him make that statement, yes.

(Testimony of Ezra Royce.)

Q. He also indicated that other people were interested in buying that stock. Now, do you know that to be the truth?

A. Just at this time, I don't recall anyone that—that would—was willing to purchase any, but it could be that there was lots of people that would, but just at the moment, I don't recall anyone.

Q. You were ready and willing to buy additional shares of stock too, were you not?

A. No, I was not.

Q. You had paid for Mr. Niederkrome's stock, had you not?

A. I loaned Mr. Niederkrome the money for it.

Q. And you did the same for Mr. Schneider?

A. Well, in Mr. Schneider's case, I would hardly consider that a loan. I made him an advance for a few days was all, and he paid me back.

Q. You were intending to have the controlling interest in this stock—in this company, were you not?

A. No.

Q. After the stock transaction was completed, and the redemption was made, you did hold the controlling interest in the Oregon Motor Stages, did you not?

A. No, I had a hundred and forty-five shares. It would have taken over two hundred shares to have the control. [121]

Q. Now, you were very active in other ventures too, were you not, Mr. Royce?

A. Well, I was in the taxicab business, and the Gray Line business; had been for many years.

(Testimony of Ezra Royce.)

Q. And you were familiar with the other Petitioners in this case, on other ventures, were you not?

A. I don't know. Mr. Jacob, I don't believe I have been in any other venture with him.

Q. Well, Mr. Schneider, you were, were you not?

A. Mr. Schneider and I were in a partnership for a couple of years, but that has been closed out.

Q. Did you have an interest in the Burnside Realty Corporation? A. Yes, I did.

Q. You had the controlling interest at the beginning, did you not?

A. No, I did not. There were three people in it originally, ten shares each, and then it developed there were four, of seven and half shares each.

Q. You mentioned the Gray Line—what is that?

A. That is a sight-seeing company.

Q. Now, you had the controlling stock interest in the Gray Line?

A. No. My brother and I were in there equal.

Q. Fifty percent apiece?

A. Well hardly fifty. There is an outstanding share or two on the outside.

Q. Now, when did negotiations for the stock begin—the Oregon [122] Motor Stages stock?

A. Oh, I think probably — oh, probably two months before the deal was consummated.

Q. The deal was consummated on July 2nd, 1945? A. Yes.

Q. Now, you stated Mr. Bentson took a rather active part in these negotiations, did you not?

(Testimony of Ezra Royce.)

A. No.

Q. When did he get interested in the purchase of the stock?

A. Well, he was down here on a visit—staying at my house, and staying at my brother's house, and also visited his niece a few days around here and there. But his wife didn't come down with him.

Q. When was that, in June of 1945?

A. Yes, I think about in June.

Q. Well, did he stay during that entire time up to July 2, 1945, when the transaction was completed?

A. Yes, I think he stayed until just after that.

Q. You say that he stayed at your place?

A. He was there for a few days, and then he spent a few days at my brother's place, and a few days with his niece.

Q. That is Mrs. Orsen, you stated here?

A. That was Mrs. Orsen, yes.

Q. Was it customary for him to stay at Mrs. Orsen's home when he got here? [123]

A. Well, he used to stay around at various places, and generally, when he came down, he would go down to Silvertown and stay a few days too. He had some of his folks down there.

Q. He was about seventy-five or seventy-six years old at the time, wasn't he?

A. About—I think probably about seventy-four, thereabouts. Might have been seventy-five. I don't hardly think so.

(Testimony of Ezra Royce.)

Q. Now, did you see any financial statement about the funds he might have?

A. No, I did not.

Q. Was he a man of expensive habits?

A. Of what?

Q. Expensive habits? A. No, he was not.

Q. Was he a lavish spender of any kind?

A. No, I wouldn't say so, no.

Q. Now, in the negotiations for the loan, you dealt primarily on that thing, did you not? You were the active negotiator for the loan?

A. You mean with ABC?

Q. That is correct. A. No, I was not.

Q. Who was? A. He was.

Q. Mr. Bentson? [124] A. Yes.

Q. Now, did you deal with George W. Davidson, who was the Manager of ABC at that time?

A. I was there when Mr. Bentson dealt with him, yes.

Q. He is now dead? A. Who?

Q. Mr. Davidson is now dead?

A. Oh, yes; yes, I believe he is.

Q. And ABC, the Portland office, has been closed for many years, hasn't it?

A. I don't know.

Q. Now, you approached George W. Davidson for a loan, did you not?

A. No, I don't think so. I think—I was with Mr. Bentson when he made the arrangements for the loan.

Q. Did you discuss the matter with Mr. David-

(Testimony of Ezra Royce.)

son and tell him that you were interested in getting a loan? A. No.

Q. Mr. Davidson relied upon your credit and reputation, did he not?

A. Well, of course, I don't know how he felt about it, but he had no reason to. I didn't represent that I was making a loan to him.

Q. Did Mr. Davidson see Mr. Bentson at all?

A. Oh, yes. [125]

Q. You introduced him to him?

A. Mr. Jacob introduced him to him. As well as myself.

Q. Did Mr. Davidson request your personal net worth, or financial statement?

A. I don't recall.

Q. You submitted one, however, did you not, to Mr. Davidson, or to the American Business Credit Corporation?

A. It's possible, but I am not sure.

Q. Now, no financial information was required of Mr. Bentson, is that correct?

A. That, I can't say.

Q. And none were actually submitted?

A. I couldn't say that either; I don't know.

Q. American Business Credit Corporation looked to you for payment, is that right?

A. I don't think so.

Q. Now, they had you sign the note as a maker?

A. No, as an accommodation on account of his situation.

Q. You did sign the note as a maker?

(Testimony of Ezra Royce.)

A. Yes, I signed the note, but as an accommodation maker.

Q. You have read the note too, haven't you?

A. Yes, I just read it a few minutes ago.

Q. You understood, did you not, that ABC could collect this money from you on this note?

A. Well, I suppose that if they found it necessary, they probably [126] could.

Q. Now, why was the check made out payable to you and Mr. Bentson, if you didn't have anything to do with it?

A. Check made out—what check?

Q. The check for three hundred and fifty thousand dollars—the loan that was obtained from the American Business Corporation—Credit Corporation?

A. I don't recall that.

Q. You do know that the check was made payable to you and Mr. Bentson?

A. No, I don't. If it was, I have forgotten it. I don't recall that.

Q. Wasn't the check turned over to you?

A. I don't think so. I don't recall that.

Q. Do you have the check—do you have the number of the exhibits that has that check? On these petitions, if your Honor please, I would like to state for the record that Respondent's Exhibit B is a check dated July 2, 1945, in the amount of three hundred and fifty thousand dollars, payable to Mr. Bentson and Mr. Royce. That has been stipulated by the parties. Didn't you endorse that

(Testimony of Ezra Royce.)

stock—that check for three hundred and fifty thousand dollars?

A. I don't recall it. The check will have to speak for itself. I just don't remember it.

Q. This is the Exhibit which shows the check—the reverse side of it. Will you just see whether that is your name that is shown [127] on there?

A. Yes, it is.

Q. It is made payable to you, and it was endorsed by you, is that correct?

A. Payable to L. R. Bentson and E. Royce.

Q. And on the reverse side of the check, your signature appears on it?

A. That's right. I had forgotten it.

Q. Now, Mr. Davidson of American Business Corporation—Credit Corporation, required that all of the stock be pledged as collateral for the loan of three hundred and fifty thousand dollars?

A. Yes.

Q. Why did you pledge your stock—because of that reason, is that right? A. Yes.

Q. You knew or understood that the three hundred and fifty shares of stock would later be redeemed by the corporation? A. I did not.

Q. You knew that the note would be paid out of the corporate funds? A. Pardon me?

Q. Did you know that the note would be paid out of the corporate funds of Oregon Motor Stages? A. Did I know that?

Q. That is correct? [128]

(Testimony of Ezra Royce.)

A. You mean when it was, or did I know it previously?

Q. When you transacted this loan? A. No.

Q. You knew, did you not, that Mr. Bentson would not pay for the stock? A. No, I did not.

Q. You testified here on direct examination that his funds were blocked by the Canadian Government?

A. That's—that's right, funds from Canada, yes, but he—if the business ran along, why, he could pay for it—and made arrangements.

Q. And that was the theory you were operating on, that——(interrupted)

A. That was the theory he was operating on.

Q. You understand that if he wouldn't have paid, you would have had to pay?

A. Well, it could possibly have been that way.

Q. Did Mr. Bentson operate—or participate in the operation of the business at all?

A. Participate in the operation of the business? He wasn't in very long.

Q. He wasn't—was he—he wasn't made a Director, was he? A. No, he wasn't.

Q. Why wasn't he made a Director at the same time you people [129] were?

A. I don't think he was interested in being a Director. I never heard him express any interest in that line.

Q. What was the purpose of the redemption of the stock?

A. Well, the—he offered—he offered to sell it,

(Testimony of Ezra Royce.)

and due to the fact the war had ended, the need for additional equipment wasn't acute any longer, so it was deemed advisable to complete the deal.

Q. Did you consider at that time of buying of his shares rather than using the money of the corporation?

A. We thought it would serve the best interest of the company.

Q. As a matter of fact, you were thinking in terms of the future of the company too, were you not, at that time?

A. Thinking of the future of the company? Yes.

Q. You were anticipating that the population would increase in the west?

A. Well, it had been increasing.

Q. And you were looking forward to an increased business from that standpoint?

A. Well, after the war stopped, it sort of cooled us off a bit on the increase in business for some time at least.

Q. Of course, the war stopping suddenly there didn't have an immediate effect on your business, did it?

A. No, it didn't have an immediate effect on the business, but it had an immediate effect on us, the group of us as operators. We didn't see the profit in sight, of course, that we did previously. Which [130] proved to be true.

Q. Actually, Mr. Bentson was never intended to hold the stock except for this short period of time, was he?

(Testimony of Ezra Royce.)

A. You say he was never intended to hold it? I don't know what his plans were otherwise, but as far as I knew, he intended to hold it.

Q. Now, I hand you Exhibit 9, it is attached to the Stipulation, and ask you if you recognize that—that purports to be a letter, does it not, dated August 31, 1945, signed by Mr. Bentson?

A. That's right.

Q. To the Oregon Motor Stages? And you accepted the offer that was stated in there?

A. Yes.

Q. You signed your name there?

A. As President of Oregon Motors.

Q. Now, in this letter, he offers to sell the stock for the same thing he paid for it, on condition that the interest be paid on the note?

A. That's right.

Q. Now, do you know that part of that interest had been paid before this letter, is that correct?

A. No, I did not.

Q. Didn't know anything about that matter?

A. No.

Q. Now, I notice that the address, Vancouver, British Columbia is on there. Will you look at that? It appears that there is an erasure on that original letter? [131] A. Where?

Q. Right here. (Indicating) Does it appear as if the——(interrupted)

A. It is a little——(interrupted)

Q. ——word "Washington" was put in there first?

(Testimony of Ezra Royce.)

A. I don't know. It looks like there has been an erasure, but I don't know what it would be.

Q. Now, you know who prepared that letter?

A. I don't know.

Q. Now, you testified Mr. Bentson was down here August 31, 1945?

A. I don't know where he had it prepared. He probably——(interrupted)

The Court: I can't hear you.

A. He probably wrote the letter himself, as far as I know.

Q. This letter seems to be coming from Vancouver, British Columbia, yet, the testimony here today, including yourself's, indicate that he was in town on August 31, 1945, and a few days before that.

A. Not my testimony.

Q. Didn't you say you talked to him about his attitude or—concerning the war, in and around that date?

A. Not that date, no.

Q. What date were you talking about?

A. I said probably some time in August. The date, I don't know.

Q. You consider that stock to be worth one thousand dollars a [132] share even on September 6, 1945, did you, or did you not?

A. Well, yes, I suppose it was.

Mr. Picco: That will be all, your Honor.

Redirect Examination

Q. (By Mr. Jones): I would like to ask one question. Where does your brother live?

(Testimony of Ezra Royce.)

A. In Santa Barbara.

Q. Where did he live in 1945?

A. He lived out of Vancouver on the Evergreen Highway, on the north bank of the Columbia River.

Q. How far out of Vancouver?

A. About seven or eight miles.

Mr. Jones: That's all, thank you.

Recross Examination

Q. (By Mr. Picco): Just one or two other questions. You knew that the check that Oregon Motor Stages made out to Mr. Bentson on July 6, 1945, in the amount of three hundred and fifty thousand dollars was to be used to pay off the note, didn't you, or did you not?

A. Your question isn't quite clear to me.

Q. Did you know that the check that Oregon Motor Stages made to Bentson was to be used to pay off the note that was signed by you and Mr. Bentson?

A. I don't—I still don't understand your question. I didn't know [133] there was a check made on July 6th.

Q. I understand that the Directors decided to redeem the stock—purchase the stock from Mr. Bentson—that is right, isn't it?

A. Wasn't that September the 6th?

Q. September 6, 1945? A. Oh, yes.

Q. What?

A. That's right, they decided to purchase the stock, that is correct.

(Testimony of Ezra Royce.)

Q. Oregon Motor Stages paid three hundred and fifty thousand dollars by check to Mr. Bentson at that time? A. That's right.

Q. Now, you knew that that was going to be applied on the note that was signed by you and Bentson? A. Well, I suppose so.

Q. Now, did that have any bearing on—on the——(interrupted)

A. I don't know as I—I don't know was I——(interrupted)

Q. ——reasons why the corporation was called to buy the stock?

A. I don't know as I ever saw that check myself. I don't believe I did.

Q. Didn't you act on that matter of redemption?

A. Yes, we did, as a group. [134]

* * * * *

Redirect Examination

Q. (By Mr. Jones): Mr. Royce, did you obtain some money—some twenty thousand dollars in 1945, in December, for the Hippodrome Amusement Company?

A. You mean—from the Hippodrome Amusement Company?

Q. Yes. A. Yes, I did.

Q. And what was the nature of the transaction by which you received that money?

A. You mean how did I——(interrupted)

Q. No, I don't mean the check or anything, but I mean, what was the understanding——(interrupted) A. Oh, as a loan.

(Testimony of Ezra Royce.)

Q. And with whom did you have that understanding?

A. With my brother, Barney, and with Mr. Niederkrome.

Q. Are they in any way interested in the Hippodrome Amusement Company?

A. Yes, they are. Both stockholders. [165]

Q. Who are the stockholders of that?

A. There is Mr.—a man by the name of Mr. Bartel (phonetic), and Mr. Niederkrome, Mr. Barney Royce and myself.

Q. And who are the Directors?

A. Mr. Barney Royce, Mr. Niederkrome and myself.

Q. And where was this understanding had about your making this—borrowing from the Hippodrome Amusement Company?

A. At our office. 628 N.W. 6th Avenue.

Q. Does Mr. Niederkrome do the accounting for the Hippodrome?

A. Yes, he does.

Q. Where is the Hippodrome properties?

A. In Seaside, Oregon.

Q. What—will you describe those properties?

A. The Hippodrome Amusement Company owns one entire block in the center of Seaside, and then has another part of a block about a hundred and fifty feet in width, and about four hundred and fifty long, also right in the center of Seaside.

Q. Well, now, what were those properties used for prior to 1945?

A. The part of it was buildings that we built

(Testimony of Ezra Royce.)

for rental purposes, and which has been rented continuously, and then, the part of the other building, the large building, was used for rental purposes, the part that fronts on Broadway Street, and the rest of it was used for a dance hall.

Q. Is the dance hall still in operation? [166]

A. No.

Q. And have you had any other intentions, or any intention to do something else with that building?

A. Well, we did plan to have a sort of a place for public meetings, at Seaside for conventions and so on, but we had a plan to build another building on the piece of vacant ground, originally planned to build it for Oregon Motor Stages, because it is a much more central location than what they had; and that didn't materialize.

Q. Why?

A. Well, the Oregon Motor Stage business was falling off rapidly, and they didn't feel it advisable to change the location.

Q. That plan didn't go through then?

A. That plan didn't go through.

Q. Did you have any other plan to use this property for some other purpose?

A. Yes, we had the negotiations with the United States Post Office Department, and those negotiations carried on for some time, and they went so far as to submit a plan to their Regional Office in Seattle, and the plan was approved, and after some alterations by their staff in Seattle, and then it was

(Testimony of Ezra Royce.)

resubmitted back to our architect, and the plan was finally approved by the Post Office Department, and was forwarded to Washington.

Q. Was that a preliminary sketch that you sent back? A. Yes.

Q. Who made it? [167]

A. Universal Plan Service—Mr. Bolen (pho-netic) and Mr. Byers (phonetic).

Q. They submitted a bill for it? A. Yes.

Q. You paid it? A. Yes.

Q. I mean——(interrupted)

A. The company paid it.

Q. ——the Universal Plan Service paid it?

A. No, the Hippodrome Amusement Company.

Q. I mean, the Hippodrome Amusement Com-pany paid the Universal Plan Service, yes.

A. That's right.

* * * * *

Q. I am going to hand you an Exhibit which we will assume is already marked—it has a pen-cilled 35 on it, and will be marked as Exhibit 35, and ask you if this is a print from the tracings of the [168] preliminary sketch?

A. (After examining Exhibit) Yes, it is.

Q. That you have been mentioning for the im-provement of the Seaside property of the Hippo-drome? A. Yes.

Q. Mr. Royce, I notice that on this plan, it says, "Building for E. Royce, Seaside, Oregon," was this E. Royce or the Hippodrome?

A. Hippodrome Amusement Company.

(Testimony of Ezra Royce.)

Q. You called up the architect and asked him to prepare them? A. Yes, I did.

Q. And was the architect Mr. H. B. Bolen and Don Byers? A. Yes, Universal Plan Service.

Mr. Jones: I should like this marked, please, as Exhibit 35.

The Clerk: Petitioner's Exhibit 35 for identification.

(Petitioner's Exhibit 35, witness E. Royce, marked for identification.)

The Court: Are you offering that?

Mr. Jones: I shall, yes. I offer it in evidence.

Mr. Picco: May I ask a few questions, your Honor, in connection with this?

Mr. Jones: Mark this Exhibit 36, would you please?

The Clerk: Petitioner's Exhibit 36 for identification.

(Petitioner's Exhibit 36, witness E. Royce, marked for identification.) [169]

The Court: Proceed.

Mr. Picco: When was this plan finished—what year?

The Witness: I—it seems to me it was either the latter part of '53 or the early part of '54.

Mr. Picco: It was in '53 and '54 then, when this came out. It says March 17, 1954, does that give you some idea of when it was?

The Witness: That probably was the date of it when it was perfected.

Mr. Picco: When it was drafted.

(Testimony of Ezra Royce.)

The Witness: And these negotiations had been going on, I would say, for, oh, almost a year.

Mr. Picco: Now, it pertains to what property here, I mean——(interrupted)

The Witness: Well, here's—this is—this block over here, which only shows a little piece of it, that belongs all to the Hippodrome, that entire block, and this piece here—this front here, a little piece here like that, does not belong to Hippodrome, and the rest of this block, which you can see is a very long block—runs clear over to the Necanicum River—that belongs to the Hippodrome and that was the location for the building.

Mr. Picco: And the fact that your name is all over this thing, you were just agent for somebody in that?

The Witness: No, I was not. I don't know why they put my name on it, but that's what they did.

Mr. Picco: I have no objection to that, your Honor, going into evidence.

The Court: It will be received.

(Petitioner's Exhibit 35, witness E. Royce, received in evidence.)

Q. (By Mr. Jones): I am not handing you the Petitioner's Exhibit Number 36 for identification, and ask you to state each of the papers—what each of the papers are that compose this Exhibit?

A. The first one is a check made to the Universal Plan Service, for sixty dollars, from the Hippodrome Amusement Company; and the second is

(Testimony of Ezra Royce.)

the invoice of the Universal Plan Service, for the plan that they made for the Hippodrome Amusement Company, for the Post Office Department.

Q. Now, this check was paid—this invoice here on Exhibit 36, is made to E. Royce?

A. Yes.

Q. The check, however, is signed by—appears to be on the bank account of Hippodrome Amusement Company?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Is it in payment for the plans which are Exhibit 35?

A. Yes.

Q. Was the plan ordered and paid for as an obligation of Hippodrome Amusement Company?

A. It was.

Q. Now, are you at the present time negotiating for anything for the improvement of that—or for the improvement of that property that's leased?

A. Yes.

Q. With whom?

A. Greyhound.

Q. Greyhound is what?

A. Greyhound—Pacific Greyhound is the largest motor stage operator on the west coast.

Q. And does it have need for some improved property, such as you are thinking of in Seaside?

A. It has need for a better location than they have at present.

Q. And that is what your negotiations are about?

A. Right.

Q. By the way, I didn't ask you this question, and perhaps I should. The Hippodrome Amuse-

(Testimony of Ezra Royce.)

ment Company is an Oregon corporation, isn't it?

A. Yes, it is.

Q. It is in good standing now—in other words, it is in existence? A. Yes.

Q. It hasn't dissolved, or expired?

A. It's a going concern, yes.

Q. Now, then——(interrupted) [172]

A. It owns all this property down there.

Q. Does it have a monthly rental income?

A. Yes.

Q. Does it have any—has it had any need for the twenty thousand dollars that you borrowed since the time you borrowed it? A. No, it has not.

Q. Do you expect it will have need for it?

A. Yes.

Q. When?

A. Well, if this negotiation develops, it will need it very shortly.

Q. If these plans here on 36 Exhibit—35 Exhibit had gone through, would there be any need for that twenty thousand dollars?

A. Yes, there would.

Q. Supposing that the Oregon Motor Stages had have gone ahead and completed, would there have been need for the money?

A. Yes, there would.

Q. When there is need for the money, what do you intend to do about it? A. Pay it.

Q. Is it a loan? A. Yes.

Q. Has it at all times been your intention to repay it? A. Yes; yes.

(Testimony of Ezra Royce.)

Q. What—now, when it was taken, was it taken with that [173] understanding? A. Yes, it was.

Q. Has there ever, in the meantime, been any different understanding or intention on your part of the other stock—of the other Directors' province? A. No.

Q. When was the Oregon Motor Stage negotiation for the improvement underway?

A. That was about in either '48 or '49.

Q. Now, I want to ask you a little question that is out of order at this time, but I promise to connect it up through Mr. Niederkrome. This—there is a note receivable standing against you on the company's books, for the amount of this loan. The note has not been presented to you for payment, is that right? A. That's correct.

Q. If it is, and when it is, what will you do?

A. Pay it.

Q. I mean, for execution—if and—if it is and when it is, what will you do?

A. If the note is presented?

Q. If the note is given to you to sign for that, what will you do? A. Sign it.

Q. Why hasn't it been signed between the time the account of note receivable was opened in '54 to the present time? [174]

A. Well, we didn't want to change the status of it during the—pending of this dispute.

Mr. Jones: You may cross-examine.

(Testimony of Ezra Royce.)

Recross Examination

Q. (By Mr. Picco): What steps were taken, if any, to remodel the building in 1945, when this loan—this so-called loan was made to you?

A. The question isn't quite clear to me, please.

Q. What steps were being taken by the corporation to remodel the building in December of 1945, at the time you took twenty thousand dollars out of the corporation?

A. I don't—I don't recall any steps in remodeling the building at that time. We did do some remodeling, but it isn't quite clear to me what year that was done in.

Q. No plans were taken to remodel actually—specific plans until 1953—the plans you just brought in—into the trial now?

A. Well, with the Post Office Department was the closest deal we have had to build a building—not remodel.

Q. These plans had to do with—to build a new building?

A. A new building, yes.

Q. Now——(interrupted)

A. There was some remodeling done on the old building—the dance hall building, at an earlier date. I don't recall the year.

Q. Now, the fact that the Commissioner's agent had started the tax investigation some time in '49 and '50 was or wasn't a factor in [175] getting out these plans?

A. Never thought of it.

Q. Now, this was an accounts receivable—it was

(Testimony of Ezra Royce.)

set up as an account receivable on the books, was it not? A. Yes.

Q. No payment was made on it during all this time? A. No.

Q. No payment has yet been made?

A. No.

Q. There has been no interest charged or paid by you? A. No, but the interest will be paid.

Q. You have the controlling stock interest in this Hippodrome?

A. I believe I do. I think I have a little more than fifty per cent.

Q. You regard the corporation—as your corporation, do you not? A. No, I do not.

Q. Don't those plans that we have—Petitioner's Exhibit 35, indicate that you regard that as E. Royce—the Hippodrome remodeling?

A. No; absolutely not. The only reason for that is, this architect knows me very well, and I called him up and told him what I wanted, and why he put my name on it, I don't know, but he did.

Q. In 1945, the corporation——(interrupted)

A. But he has done work for the Hippodrome Amusement Company [176] before, so he knows better.

Q. You say that in 1945, the corporation was thinking in terms of remodeling or expanding, or putting on a new building?

Mr. Jones: What year did you say?

Q. 1945?

A. Well, it has been our plan, in our mind, for

(Testimony of Ezra Royce.)

some considerable time, if we could find a suitable tenant, we wanted to construct a building on this vacant property.

Q. Now, wouldn't that indicate that there was a need for that twenty thousand dollars in the corporation, rather than in your hands?

A. No, the corporation had no need for the money at that time, and hasn't had since. But if any one of those—either one of those propositions had developed, they would have needed it.

Q. Now, you also stated that you had some arrangements or negotiations going on with Oregon Motor Stages? A. Yes.

Q. That was in 1945 and '46?

A. No, I think that was about in '48 or '49.

Q. Now, Oregon Motor Stages is a corporation that is owned by you and the Petitioners—the other Petitioners in these proceedings?

A. Let's see—yes, about—there were about five—five ownerships in the property.

Q. You mentioned that Oregon Motor Stages decided—Oregon Motor Stages wouldn't be interested because revenues were dropping off, is that correct? [177]

A. They seemed to feel that way, yes.

Q. That was in '47 and '48?

A. No, '48 and '49.

Q. Now, isn't it true that Oregon Motor Stages, in 1948, bought land at Seaside?

A. The Oregon Motor Stages had a couple of—they bought about two vacant lots for turn-around

(Testimony of Ezra Royce.)

purposes at—where they—presently have depots for some time.

Q. What was the purpose of that? Weren't they thinking in terms of getting a place where people could board the—board your buses?

A. Well, the reason they bought those lots was, they didn't have adequate facilities for turning around and so on and so forth.

Q. Isn't that exactly what the Hippodrome Company could have done for them, provided that for them? A. Oh, yes.

Q. Isn't it true, therefore, that Oregon Motor Stages had no intentions of doing that? They intended to buy land of their own down there, and do that very same thing you say was the reason for taking the money out?

A. No; no; no, that is not correct. The present location of their depot is way over by the old railroad depot. It is out of the center of the town, and it's a poor location.

Q. Now——(interrupted)

A. But they didn't have facilities for handling big equipment [178] without the purchase of those two vacant lots. I believe it was two vacant lots.

Q. Now, actually, you say it's two vacant lots. Now, they actually paid sixty-five thousand dollars for the two vacant lots, did they not?

A. They sure did not.

Q. Didn't they purchase the Burke (phonetic) Motor Sales building in November, 1949—I am talking about Oregon Motor Stages?

(Testimony of Ezra Royce.)

A. Oh, no. In Seaside, they—I think they paid about three hundred dollars apiece for those two lots that they bought.

Q. Now, to get back to the question. Did the Oregon Motor Stages pay sixty-five thousand dollars for a building in 1949 at Seaside?

A. They did not.

Q. Were they authorized to buy a building for sixty-five thousand dollars in 1949?

A. At Seaside?

Q. That's correct. A. No, sir.

Q. Did we have—do we have the corporate minutes of the Oregon Motor Stages here? Hippodrome is at Astoria, isn't it?

Mr. Jones: No, Seaside.

Q. Well, this was at Seaside, too, wasn't it?

A. I beg your pardon. You have confused the purchase of that building that was in Astoria. [179]

Q. As distinguished from Seaside?

A. From Seaside, yes.

Q. All right.

A. But the vacant lot was in Seaside.

Q. Now, was there a Directors' meeting of the Hippodrome Company held in connection with the building plan that we have here, Petitioner's Exhibit 35? A. Yes, I think so.

Q. Do we have the minutes of the Hippodrome Company here?

Mr. Jones: No.

Mr. Picco: Are you going to have them here?

Mr. Jones: If you have to have them.

(Testimony of Ezra Royce.)

Q. You had a Directors' meeting on that—was it reduced to the minutes of the corporation?

A. On the Post Office?

Q. No, about—about this plan that you had in 1953?

A. That's the Post Office plan.

Q. All right, if that is what it is, yes.

A. Yes. I don't know whether there was a—whether it got to that point, because we didn't—we didn't have a go ahead from the Post Office Department, however, the Post Office Department, the Inspector, Mr. Northrup (phonetic), told me, "Don't be concerned about it," he says, "we're going through with this deal." But it didn't go through, and they—however, they are building a post office, but it wasn't put on that piece of ground. [180]

Q. Now, when was the account receivable changed to a note receivable?

A. I don't—Mr. Niederkrome could tell you that better. I am not quite as familiar with it as he is.

Q. Some time in '53, wasn't it?

A. I wouldn't be sure. He would know.

Q. Now, you stated that you didn't want the change of status of that account, is that correct?

A. That I didn't want to change it?

Q. Yes, and that's why the note wasn't issued to you for execution?

A. I said that due to this dispute we had with the Government, that we didn't want to change it.

Q. Actually, you did change it on the books of the corporation?

(Testimony of Ezra Royce.)

A. Well, Mr.—I didn't change it. Mr. Niederkrome takes care of the books, and he would be able to explain that to you better. I am not too familiar with it. [181]

* * * * *

EZRA ROYCE

the previous witness called on behalf of the Petitioners assumed the stand following the previous two witnesses out of order, and continued as follows:

Re-redirect Examination

Q. (By Mr. Jones): Mr. Royce, when were you married to Mrs. Royce? A. 1923.

Q. How long have you been in the taxicab business in Portland? [196]

A. Forty-five years.

Q. Prior to the time that there was the present partnership, was there a corporation?

A. Yes, there was.

Q. And did Mrs. Royce perform any services for the taxicab company during the time there was the corporation and prior to the partnership?

A. Yes, she did.

Q. What was the nature of her services?

A. Well, she done a lot of checking on drivers, the quality of service, number of passengers in various places; how they handled the public, at the depots, hotels, stands, and so on and so forth.

Q. And where did you perform your services?

A. I was busy at the office, shops, garage, and so on.

(Testimony of Ezra Royce.)

Q. Now, was that corporation subsequently dissolved? A. Yes, it was.

Q. Prior to its dissolution, was any stock given to Mrs. Royce? A. Yes.

Q. I would like to hand you the Exhibit Number 23—I am handing you here, Exhibit Number 23, and asking you to state what that is?

A. That is a stock certificate for fourteen thousand shares, Yellow Cab, Incorporated, an Oregon corporation, Portland, Oregon, to Dora F. Royce.

Q. Now, after this stock was given to her, and she was the owner [197] of it, was the corporation liquidated? A. Yes, it was.

Q. And a partnership formed? A. Yes.

Q. Who were the partners?

A. Mr. and Mrs. B. Royce, Dora F. Royce and myself, Mr. Charles Keffer (phonetic) and Mr. C. H. Luton (phonetic).

Q. Had those—I want to just call attention to the admitted Exhibit, your Honor, that Exhibit Number 24 is the meeting—minutes of the meeting of dissolution of the corporation, and there is no use to go into those. And Exhibit Number 25, I am going to hand to you and ask you to state what that is?

A. Partnership Agreement, Articles of Partnership.

Q. That's signed by whom?

A. E. Royce, B. Royce, C. H. Luton, Charles W. Keffer, Dora F. Royce, Isabelle H. Royce.

Q. Thank you. Now, when you gave—when you

(Testimony of Ezra Royce.)

gave the stock certificate to Mrs. Royce, what was your intention with respect to the gift?

A. I intended that she become a partner in the company.

Q. Well, was the gift—was the gift—have any conditions to it, of any kind?

A. None whatever.

Q. Was it—was she obligated to become a partner in the company, when you gave it to her? [198]

A. Yes.

Q. Did you really—what was your actual intention, so far as the duration of the gift was concerned?

A. There was no duration.

Q. What? A. There was no duration.

Q. Well, do you mean by that it was short time, or long time, or permanent, or what?

A. Permanent.

Q. Permanent. Now, then, since she was made a partner to the company—to the—made a partner in the Yellow Cab Company, the partnership, in Portland—now, my questions, until I announce otherwise are directed entirely to the Portland partnership. I will go to the Seattle later. And what services, if any, has she performed for the partnership?

A. You say has she performed?

Q. Does she—what does she—what has she performed?

A. As I stated previously, she does a lot of checking of the drivers, at the stands, the hotels, appearance of uniforms, condition of uniforms,

(Testimony of Ezra Royce.)

and the appearance of the cabs; cleanliness; the number of passengers they carry—reports those to the office.

Q. How much time does she devote to an occupation of that kind?

A. Oh, at times, she devotes considerable. Other times, not quite so much. [199]

The Court: Is this in the present time or—
(interrupted)

The Witness: She still does it. She still does that. Has for years.

Q. Now, the years in question here are '44 to '47—during that period of time, '44 to '47—during that period of time, how much time there was she devoting to this?

A. Well, I would say a great deal. Some—some days she would put in a good many hours, and of course, some days, not so much, it depends on—(interrupted)

Q. How important is this type of work to a taxicab company? A. Very important.

Q. How about just getting a paid employee to do it?

A. Generally speaking, it doesn't work so well.

Q. And why is that, Mr. Royce?

A. Well, they are not interested too much. It doesn't mean anything to them, particularly.

Q. Now, did Mrs. Royce receive drawings of the partners from this partnership?

A. Yes, she did.

(Testimony of Ezra Royce.)

Q. Do you know whether she had a bank account of her own? A. Yes, she did.

Q. Do you know any of the things she spent her drawings for? A. Yes, I do.

Q. Would you recite some of them? [200]

A. Well, she bought herself fur coats and she wanted the basement of our house completed; it was a partial basement—she wanted to make a full basement, and install a downstairs kitchen; walk-in cooler; large freezer; storerooms; luggage room; washroom, and so on and that is one of the things that she—and enlarged the kitchen upstairs.

Q. Did she do that with her own funds?

A. Yes, she did.

Q. Can you name any other concrete articles that she purchased?

A. Yes, she has always been quite a hand for buying books—she bought a lot of books—good many hundred dollars' worth. She—another item, there was an Exercycle she bought.

Q. What would that cost?

A. About three hundred and some dollars, I guess—three hundred and fifty—three hundred and twenty-five.

Q. Now, do you know whether she ever bought any automobiles? A. Yes.

Q. What did she buy?

A. She had a—a Pontiac.

Q. During this period, '44 to '47?

A. Oh, during that period? Excuse me.

Q. Yes.

(Testimony of Ezra Royce.)

A. She had a Plymouth, I believe about '44, and then she had two New Yorkers. [201]

Q. Those Chryslers?

A. Yes, New Yorkers—Chryslers.

Q. Were those purchased new? A. Yes.

Q. What were the cost of those?

A. Oh, I think around about—probably close to four thousand dollars, I don't know the exact price.

Q. What were the cost of these—this fur coat?

A. She had a couple of fur coats.

Q. Well, what were the cost?

A. Just as a guess, about a thousand dollars apiece, say.

Q. Did she ever buy any furniture for the house?

A. Yes, she did. Quite a considerable.

Q. What was that?

A. Oh, various things—rugs and odd pieces.

Q. Any dishes or table linen?

A. Table linen, yes, quite a considerable.

Q. Well, what about that? Do you know about it, specifically?

A. Well, I know one tablecloth she bought.

Q. What kind?

A. I think it is a hand-painted cloth.

Q. Do you know what the price was?

A. Well, not exactly, but it was considerable.

Q. All right, what about—did she buy any silverware? A. Yes. [202]

Q. How much did she pay for it, do you know?

(Testimony of Ezra Royce.)

A. I think probably it ran about eighteen hundred dollars, is my guess.

Q. Did she buy any bonds or stocks?

A. Yes.

Q. What?

A. She bought quite a good many Government bonds, and she bought some stock, some bonds.

Q. In what company?

A. I recall the Missouri-Pacific Railroad, one.

Q. Was that bonds or stock?

A. I believe it was both.

Q. What is the cost of this improvement work that you have been elaborating on about the house? What did that amount to?

A. It ran somewhere between fifteen and eighteen thousand dollars.

Q. Was that—all these expenditures out of her drawings? A. Yes.

Q. Who made the sketches for this improvement on the house? A. She did.

Q. Who——(interrupted)

A. In fact, she made the sketches for the entire house.

Q. Who took care of the ordinary household expenditures, like food, light, heat, groceries, and things of that kind? [203] A. I did.

Q. She didn't buy any of that?

A. Oh, a little, I suppose; not very much.

Q. You took care of it? A. Yes.

Q. That was your department?

(Testimony of Ezra Royce.)

A. Generally speaking, that was—heat, light, taxes, insurance.

Q. Now, when you formed this partnership, what was the intention of the other partners and yourself, particularly with respect to Mrs. Royce being a valid and bona fide partner?

A. Our intentions were that she was a full partner.

Q. Is she? A. Yes. I——(interrupted)

Q. Do you know what her interest in the partnership is? A. About twenty-three per cent.

Q. Do the other partners recognize her as a full partner? A. Yes, they do.

Q. As a working partner? A. Yes.

Q. Mr. Royce, now, there was—I would like to go to the Seattle partnership, if I may. There was a pre-existing Washington corporation known as the Yellow Cab, Incorporated, a Washington corporation, is that correct?

A. There was a corporation, if that's just the exact name, I am not positive. [204]

Q. Well, I will show you some shares of stock here—I am handing you Petitioner's Exhibit Number 14—I think that's 14—14—that has been received in evidence. But I would like to ask—have you state what it is?

A. It is a certificate of the Yellow Cab Company of Seattle, for three hundred shares of stock, made out to E. Royce.

Q. Now, would you look at the next certificate?

A. That is a certificate for seven hundred shares

(Testimony of Ezra Royce.)

of stock, made out to E. Royce, trustee for E. M. Royce, a minor.

Q. Now, take a look at the next one, please?

A. That is a certificate for four hundred and two and a half shares of stock, of the Yellow Cab Company of Seattle, made out to D. F. Royce.

Q. Well, now, Mr. Royce, when you—first, who is D. F. Royce? A. Mrs. E. Royce.

Q. That's Dora F. Royce.

A. Dora F. Royce.

Q. And she is one of the Petitioners involved in these suits? A. Yes.

Q. And she is the party that we referred to as your wife, in talking about the Portland——(interrupted) A. That is correct, yes.

Q. ——partnership. Now, who is E. M. Royce, mentioned in Certificate Twenty-three, on Exhibit 14? [205]

A. That is my daughter.

Q. How old is your daughter at this time?

A. Twenty-six.

Q. When did she become of age?

A. In 1950.

Q. And this—these certificates are dated in '44—she was about fourteen or fifteen at the time these were made, or how old?

A. Fifteen, I believe.

Q. Fifteen. Now, at the time, or about the time these certificates were made, did you execute a declaration of trust for her? A. Yes, I did.

Q. I'd like to show you, Exhibit Number 15,

(Testimony of Ezra Royce.)

and ask you if that is the Exhibit of trust to which you have referred—or the declaration of trust to which you have referred?

A. (After examining Exhibit) Yes, it is.

Q. That is in irrevocable trust by its terms, is it?

A. That's correct.

Mr. Jones: Just, if the Court please, I would like to read one paragraph of this, I think we can carry the thread of it a little better. (Reading) "I, Ezra Royce—" —or, "That I, Ezra Royce, of Portland, Oregon, do hereby declare that I am the sole and absolute owner of the following described personal property in my own right, but do declare that I hold the same, henceforth, from the date hereof, in trust, in the form of a trust, herein [206] declared and created for the benefit of my beloved daughter, Eunice M. Royce, and others hereinafter named, seven hundred shares of the capital stock of Yellow Cab Company of Seattle, represented by Certificate Number Twenty-three." Now, the thing shows, and I won't take the time to read further, that there may be conversions of other types of property.

Q. (Continuing by Mr. Jones) Now, after these shares of stock had been issued, was there a partnership created? A. Yes, there was.

Q. Now, when you gave these shares of stock, did you give them outright, or was there any conditions to them?

A. No conditions, no; an outright gift.

(Testimony of Ezra Royce.)

Q. They were in perpetuity—in other words, they were their shares? A. Absolutely.

Q. Now, a partnership then was created. How many partners were there in that? I will give you—I will hand you the Articles of Copartnership—I believe you have those over here—16? I would like that, please. May I have the gift tax return? I will take this bunch right here. Thank you. Here is the declaration of trust. The Articles of Copartnership is what I want. Thank you. When you made this gift of this stock, the gift was one gift to your wife, Dora F. Royce, or D. F. Royce, and one to your daughter, is that correct? A. That is correct.

Q. And then you filed gift tax returns? [207]

A. That's correct.

Q. And these are the gift tax returns, both of the donor and the donees, covering the gifts?

A. Yes; that's right.

Q. And—(interrupted)

Mr. Picco: Mr. Jones, what Exhibit is that?

Mr. Jones: This is Exhibit Number 16.

Q. (By Mr. Jones): Sixteen was what I had referred to as the gift tax returns? A. Yes.

Q. Thank you. Now, after this gift was made, was the partnership formed?

A. Yes, there was, a partnership.

Q. And the old corporation liquidated, is that correct? A. That's correct.

Q. And did the stockholders in the old corporation, after liquidation, become partners in the new partnership? A. Yes, they did.

(Testimony of Ezra Royce.)

Q. And I am handing you now, Exhibit Number 18, and asking you to state who the partners of the new partnership were? At the time—find out who they are now?

A. They were B. Royce, E. Royce, E. Royce, trustee for E. M. Royce, a minor, D. F. Royce, A. H. Wenck, W. L. Rothchild, J. A. Baldy (phonetic), G. E. Worster (phonetic), D. N. Newton (phonetic), L. S. Ackerman (phonetic). [208]

Q. Are any of those men—have any of those men died since? A. J. A. Baldy.

Q. He has since passed away? A. Yes.

Q. Now, then, do you know what the intention of those partners was at the time this partnership was organized, with respect to whether your wife, Dora F. Royce, and the trust, yourself, as trustee for your daughter, what their intention was with respect to whether those two entities were to be bona fide partners? A. Yes, they were.

Q. Has that still been the intention?

A. Yes. Still is.

Q. Tell me how that partnership up in Seattle operates—who is the Manager?

A. Mr. A. H. Wenck, has been the Manager at all times, since it was organized.

Q. And did this—do you find it necessary to go up there very much?

A. Not very much, no.

Q. And does your wife ever go up there?

A. Oh, occasionally, she goes with me.

Q. And what does—when you go up there, and

(Testimony of Ezra Royce.)

when she goes up there, what is the—what do you do with respect to the partnership?

A. Oh, we look around, to see how things are going. [209]

Q. But Mr. Wenck is the active Manager, is that right?

A. Mr. Wenck is the active Manager, and a very good man.

Q. Now, when she's there, in addition—do you have conferences? A. Oh, yes.

Q. Does she take part in those?

A. Yes, she does.

Q. When you are not—when she is not in those conferences, does she do any other work up there with respect to—— (interrupted)

A. Yes, she looks around, to see how things are—various prominent points.

Q. Does she report those findings?

A. Oh, yes. Like hotels, depots.

Q. Now, do you maintain a bank account, as a trustee, for the trust for Eunice?

A. Yes, I do. [210]

* * * * *

Q. (By Mr. Jones): I am handing you now, Petitioner's Exhibit 37 for identification, and ask you to state what that is, Mr. Royce?

A. That is a passbook of the United States National Bank, in the account of E. Royce, trustee, for E. M. Royce.

Q. Now, does Eunice, and also, does your wife, Mrs. D. F. Royce, receive drawings from the part-

(Testimony of Ezra Royce.)

nership in Seattle? A. Yes, they do.

Q. Now, when you get them on behalf of Eunice, do you—what do you do with them?

A. Deposit it in the United States National Bank.

Q. In the account represented by this passbook, Exhibit 37? A. That's right. [211]

Q. Has every drawing ever received from that partnership up there, since it was created, that was made out to Eunice, been put in this bank account?

A. Yes, it has.

Q. So this records every—every deposit?

A. That's correct.

Q. And every withdrawal?

A. That's right.

Mr. Jones: We offer it in evidence. That's 37.

Mr. Picco: Did you develop how much money is in there?

Mr. Jones: I have got an accountant that will put on the—put on the sheet that tabulates that in the disbursements.

Mr. Picco: No objection.

The Court: Exhibit 37 is in evidence.

(Petitioner's Exhibit 37, witness E. Royce, received in evidence.)

Q. (By Mr. Jones): Now, I am handing you Exhibit Number 38 for identification, and ask you what that is—what those are—what makes up the Exhibit?

A. Those are the checks that have drawn against the account of E. M. Royce, of which I am trustee.

(Testimony of Ezra Royce.)

Q. During the years here involved?

A. Yes.

Q. Now, there are a few missing checks in here that have been— [212] you have not been able to find, I understand, is that correct?

A. That is correct.

Q. Now, those can be ascertained from the stub book what they are? A. Yes; oh, yes.

Q. And on the statement that the accountant will put in, will all the missing numbers be accounted for? A. Yes, they will.

Mr. Picco: If I understand you correct, these are the checks made out by yourself as trustee, coming out of that bank account?

The Witness: Yes, that's correct.

Mr. Picco: And for various expenditures?

The Witness: Yes.

Mr. Picco: No objection, your Honor.

The Court: Exhibit 38 in evidence.

(Petitioner's Exhibit 38, witness E. Royce, received in evidence.)

Q. (By Mr. Jones): Now, Mr. Royce, at the— at times, have you as an individual, borrowed money from this trust? A. Yes, I have.

Q. And when you have borrowed it, what have you done to show your borrowing it?

A. Made out some notes.

Q. And as those notes became due and weren't paid, what did you [213] do?

A. Renewed them.

* * * * *

(Testimony of Ezra Royce.)

Q. (By Mr. Jones): Now, have some of the borrowings that you have made, been repaid? I am talking about the borrowings during [214] this particular period now—have some of those been repaid? A. Yes, they have.

Q. And are these copies of the notes you gave for the borrowings that you made from the trust?

A. Yes, that's right.

Mr. Jones: I would like to offer them in evidence.

Mr. Picco: I would like to ask a few questions first. Now, are these all of the notes you have on this?

The Witness: During these years?

Mr. Picco: Well, for all of the time that you were trustee, during the years '44 to '47?

The Witness: Yes.

Mr. Picco: This represents the amount of money during those years that you took out in the form of notes?

The Witness: I think it goes past '47, doesn't it?

Mr. Jones: It goes to '49, doesn't it? Let's see, isn't the year '49 involved in this?

Mr. Picco: Oh, yes, on Eunice's—'49—'44 to '49.

The Witness: I think it covers '49, yes.

Mr. Picco: Now, these are dated July 7th, 1952; December 26, '53, and July 10, 1951.

The Witness: Yes.

Mr. Picco: So what does that mean?

The Witness: That means they were renewed.

(Testimony of Ezra Royce.)

Mr. Picco: You have the renewal notes — the other notes? [215]

The Witness: I am not sure. I think so.

Mr. Picco: Could you bring these—the old notes over, so that we can look at them—— (interrupted)

The Witness: I think so.

Mr. Picco: ——this afternoon?

The Witness: I think I have them.

Mr. Picco: Now, this constitutes all of the amount that you borrowed from the trust?

The Witness: That's right.

Mr. Jones: For that period.

Mr. Picco: For that period?

The Witness: That's correct.

Mr. Picco: You are sure that there wasn't some hundred and fifty thousand dollars that was borrowed during that period from the trust, rather than two thousand, twenty-five thousand and sixty thousand?

The Witness: Yes, I'm sure.

Mr. Picco: No objection to that going in, your Honor.

The Court: Exhibit 39 in evidence.

(Petitioner's Exhibit 39, witness E. Royce, received in evidence.)

Q. (By Mr. Jones): Now, during this period, were some sums taken from this account, and deposited to Eunice's own bank account? A. Yes.

Q. Now, Eunice lived at home until she was about eighteen, [216] going to high school, is that right? A. Yes, that's correct.

(Testimony of Ezra Royce.)

Q. And then, where was she from 1918 to 1951?

A. Well—— (interrupted)

Q. Well, I don't think I should—yes, for one year, it's important.

A. Well, I believe you have that date wrong. You said 1918. That's too early.

Q. Yes, from the time she was eighteen, I meant to say—from the time she was eighteen until 1951?

A. She was at the—going to school at Oregon University.

Q. At the University of Oregon? A. Yes.

Q. Now, one of those years—one of those years would be 1949, wouldn't it? A. Yes.

Q. In other words, was she in school in 1949?

A. Yes.

Q. So, some of the checks that were in here went into the bank account that she used during that period? A. That's right.

Q. And where is that bank account located?

A. That's at the Sixth and Morrison Branch of the First National Bank.

Q. I would like to call your attention specifically to—here is [217] a check for two hundred dollars to Eunice, and here is another one for three hundred dollars to Eunice, and there are—here is another one for three hundred dollars to Eunice—they are checks in those denominations—are those the checks that you took from the trust account and put into her own bank account that she has?

A. That's correct.

Q. Mr. Royce, I would like to ask you one ques-

(Testimony of Ezra Royce.)

tion a little bit—on another issue here—did you and the partners in Portland also hold conferences about the partnership? A. In Portland?

Q. In Portland, about the Portland partnership? A. Yes.

Mr. Picco: This is in respect to the Portland—— (interrupted)

Mr. Jones: This is in respect to the Portland—I'm sorry—I am a little out of place here, but I overlooked that.

Q. Did you and the other partners hold conferences about that? A. Yes, we did.

Q. Did your wife attend those conferences?

A. Yes, she did.

Q. Did she take part? A. Yes.

Q. And does she keep herself informed about the conditions of the Portland business?

A. Pretty well. [218]

Q. And about the Seattle business?

A. Yes, she does.

Q. Now, then, we have shown that you put in gift tax returns for the gifts that you made in—in Seattle. Did you make a gift tax return for the ones that you made here in Portland?

A. No, I did not.

Q. Why?

A. I didn't know that there was such a thing.

Q. Who made your tax returns in those days?

A. I did.

Q. And the gift at that time was fourteen thou-

(Testimony of Ezra Royce.)

sand shares, and those were one dollar shares, were they not? A. Yes, they were.

Q. Now, then, in both of the partnerships, your assumed name certificates, both at Seattle and Portland were filed, weren't they? A. Yes.

Q. One in King County, in the Clerk's office, and the other one in the County Clerk of Multnomah County office? A. That's right.

Q. Your wife—they are in evidence. I just want—— (interrupted) A. Oh, yes.

Q. ——to make reference to it. Your wife signed at both places? A. Yes.

Q. Now, when this partnership was formed in Seattle, was she [219] present at the meeting where the formation was made? A. Yes, she was.

Q. That's true in Portland also? A. Yes.

Q. In connection with the liquidation of the partnership up in Seattle, all of the stockholders tendered their stock for cancellation for the liquidation of the Seattle partnership, is that right?

A. Yes, they did.

Q. I would like to refer you to Exhibit Number 17—I think it's over here, and ask you if that—this is a photostat of that tender? Here is the original tender. This is the original tender of that stock signed by all of the stockholders, is that correct?

A. That is correct.

Q. And the figures in the column on the right show the number of shares that each of them held at the time, in the corporation, just before liquidation?

A. Yes.

(Testimony of Ezra Royce.)

Q. Thank you. Now, that stock was all, actually, turned in and cancelled? A. Yes, it was.

Q. And the same was true in Portland, that all the stock was turned in and cancelled here?

A. Yes.

Q. That is the pre-existing taxicab company was cancelled before the Portland taxicab company was organized? [220] A. Yes.

Q. Now, in these policy meetings that you have in Portland and Seattle, how is the opinion and judgment of Mrs. Royce received in them?

A. Very well.

Q. Does she take part in the discussions?

A. Oh, yes.

Q. And in the partnership up there, both you, as trustee for Eunice, or Eunice, however you want to put it—— (interrupted) A. Yes.

Q. ——and your wife, have they at all times been treated as bona fide partners?

A. Oh, yes.

Q. And so regarded? A. Yes, indeed.

Q. And that is the intention of all the partners——parties up there? A. Yes.

Q. Now, I would like you to tell me something—I would like to have you tell me something about the business experience of Mrs. Royce prior to her marriage to you?

A. Mrs. Royce started out learning the milliner's trade, and worked her apprenticeship, I believe, in Salem; then went to Lewiston, Idaho, and Toppenish, Washington, Tacoma, Washington; Se-

(Testimony of Ezra Royce.)

attle, Washington, where she was a designer and in charge of the operation [221] for McDougal and Southwick (phonetic), the department store. Then, after she came to Portland, she was for some time with Meier and Frank Company. In designing.

Q. She had had considerable business experience—— (interrupted) A. Oh, yes.

Q. ——before you married her? A. Yes.

Q. Now, in this expense account that Eunice had, was she free to draw out of that as she needed funds? A. Yes.

The Court: Did she, in fact, draw out of it?

A. You mean herself? Sign her own checks?

The Court: Yes.

A. No. She always asked me for whatever she needed. I took care of it.

Mr. Jones: If the Court please, did you mean on her own account, or on this trust account?

The Court: The trust account.

Q. On the trust account, you always signed the checks? A. Yes.

Q. On her account, she alone signed the checks without consulting anyone.

A. Yes, had nothing to do with the trust account.

Q. Except that the money for it—a great deal of it came from [222] the trust account?

A. That is correct.

Q. Now, what is the main producing—income-producing factor in a taxicab business?

A. Well, first, you must have capital.

(Testimony of Ezra Royce.)

Q. Well, is that the important income-producing factor? A. Sure is.

Q. Now, when did Eunice first learn of her own trust?

A. I think it was about when she was eighteen years old.

Q. And where did you tell her?

A. At home.

Q. And in what room?

A. In the kitchen.

Q. And who was present?

A. Mrs. Royce and myself.

Q. Why didn't you tell her before she was eighteen?

A. Well, I thought she was too young to understand. What it was all about.

Q. Since that time, she has known all about its operation? A. Oh, yes.

Q. Did you ever have a joint checking account with your wife? A. No, I did not. [223]

* * * * *

Re-Recross Examination

Q. (By Mr. Picco): I am going to ask questions in regard to the Portland Yellow Cab—— (interrupted) A. Yes.

Q. ——partnership — Yellow Cab, Portland, right now. Now, you made a gift of the stock to your wife and daughter—or to your wife, Dora, August 1, 1942? A. That's right.

Q. Now, at the same time, Yellow Cab, Inc., was

(Testimony of Ezra Royce.)

dissolved, and a partnership by the same name was formed?

A. I didn't quite understand that question?

Q. At the same time, August 1, 1942, the corporation, Yellow Cab, Inc., was dissolved, and the partnership of the same name was [224] formed?

A. I know it was quite close. I didn't know that it was the same day. I thought that it was a little later.

Q. Now, you—all right—you testified on direct examination, that when you turned over the stock to your wife, Dora Royce, you intended her to become a partner in the company?

A. That's right.

Q. And you stated that she was morally obligated to become a partner? A. Yes.

Q. You wouldn't have given her the stock, if she hadn't felt that way about it—if she hadn't felt that she was obligated to become a partner?

A. Well, she—she was—being as she was of so much help to me, and so on, that I felt morally obligated to do it.

Q. That was the purpose of giving—making the gift of stock? A. To make her a partner.

Q. That's right. A. That's right.

Q. Now, as to her activity as a partner. You mentioned that she performed many services. Now, these services were minor in character, were they not?

A. I don't think so. To a taxicab operation, those

(Testimony of Ezra Royce.)

things are vitally important. It's all we have to sell is service.

Q. Service is very important, I take it, in the operation of the [225] Yellow Cab Company here in Portland?

A. It's all we have to sell.

Q. Now, would you tell us just the time she used in giving services again—go over a little of the nature of the services?

A. She—she would check the driver's appearance, and the service they render, at the hotels, depots, places of that kind, where they are easily available to check. Check the number of passengers in the cabs to see that the drivers report the number properly—conditions of the uniforms, conditions of the cabs, appearance for cleanliness, and so on and so forth.

Q. You didn't do any of that yourself, did you?

A. Oh, yes, at times, whenever I have an opportunity, yes.

Q. You made the decisions—— (interrupted)

A. It is a never ending job. I beg your pardon?

Q. You made the decisions—the important decisions on the operation of the cab company?

A. You say I did?

Q. Yes. A. Well, I suppose.

Q. What were your duties, as distinguished from Dora Royce's duties?

A. Well, I was looking after the things at the office, and around the garages, and so on and so forth; building, shop, shop crew, garage crew, and things of that nature.

(Testimony of Ezra Royce.)

Q. You were making the everyday decisions that had to be made? [226]

A. Yes.

Q. Now, you say that Dora Royce rendered these services during all of these years, 1944 to '44—to 49? A. Yes; still does.

Q. Can you tell me—can you estimate the per cent of the time that she spent in rendering services to the partnership?

A. Per cent of her time?

Q. Yes, was it a great deal of time?

A. Yes, quite a bit.

Q. Would you go into that a little more? Was she down there everyday?

A. No, not everyday, but lots of days she would be there—put in a lot of time, and sometimes in the evening, also.

Q. You say she devoted fifty per cent of her time to the partnership? Or less?

A. That would be a little hard to estimate, as I say, some days she put in a considerable time, and then, some days, she didn't put in much, if she had some other matter that she had to take care of.

Q. In any event, she put in considerable time and energy——(interrupted) A. Yes.

Q. ——in addition to services?

A. That's right. That's my opinion.

Q. I hand you Respondent's Exhibit B, which is the partnership return of Yellow Cab Company, Portland, for the year 1946, and [227] direct your attention to Schedule I. That Schedule I has to

(Testimony of Ezra Royce.)

do with partner's share of the income and credit, and there is a paragraph 2 devoted—yes—per cent of time devoted to the business. Will you please read what per cent of time was devoted to the business by Dora F. Royce?

A. The bookkeeper put down "none." But he didn't know too much about it. Whoever typed that just typed that in there, and I don't know.

The Court: I can't hear you.

A. I said whoever typed this out didn't know anything about it. They just typed in "none."

Q. Now, this is your signature——(interrupted)

A. And they put me down for fifty per cent. That's certainly not correct, either.

Q. Is that your signature?

A. That's right.

Q. You certified that the return was correct on that, did you not?

A. Yes. I didn't—that sort of a thing, I never give any consideration to.

Q. Now, I hand you Respondent's Exhibit W, which is the partnership return of the same company, for 1948, and ask you again, on page 4, to look at Schedule I, and see if the same thing hasn't been reported there?

A. That is the same thing. [228]

Mr. Jones: What year is this?

Mr. Picco: 1948.

Mr. Jones: Well, I object to '48. It's not even in evidence. That is a year that isn't even involved here.

(Testimony of Ezra Royce.)

Mr. Picco: Well, it is, '44 through '49.

Mr. Jones: Not in Portland. '47.

Q. (By Mr. Picco): It won't be necessary for that. You did state, did you not, that she is still continuing those services after the years in question? A. Yes, still does.

Q. And would you say that this return for 1948 is wrong also, in that respect?

A. Yes, I would.

Q. Now, I hand you Respondent's Exhibit—(interrupted)

A. For some reason, he raised it up to seventy-five per cent for me also. I don't know why.

Q. Perhaps you worked a little harder that year on that, would that be the answer?

A. In his opinion, apparently (laughter).

Q. Now, I hand you Respondent's Exhibit X, which is the partnership return for the year 1949, and direct your attention to page 4, Schedule I, and ask you if her percentage of the time reported was again none? A. That's right.

Q. And you signed that return also, did you not? [229] A. I did.

Q. Now, as to her distribution—her distributable share of the earnings—was it all withdrawn—all of the money—her distributable share of the money in the partnership, was it all withdrawn from the partnership?

A. I can't answer that exactly. But whatever—whenever there was a distribution, why, her share was withdrawn, whatever that distribution was.

(Testimony of Ezra Royce.)

Q. Will you roughly tell us what—how much of the distributive share was for the year '44—1944 to 1947?

A. Just offhand, I couldn't. You would have to refer to the records.

Q. Now, you testified that as to some items, she used that money for herself—the expended money?

A. That's right.

Q. They were comparatively small amounts of money, were they not?

A. Well, no, I wouldn't say so.

Q. In comparison to the amount of money that she received from the partnership, it was?

A. Well, yes, that would be true, but of course, the biggest item was taxes—that was the big item, of course. But it came out of the money that was distributed to her.

Q. One of the big items was the payment of the taxes?

A. That was the big item—biggest item. [230]

Q. Now, you say that a lot—you say that some of the money went into bonds and stock?

A. Yes.

Q. How was that made—how were the bonds and stock made payable to—to your joint account—jointly, you and Dora?

A. We have never had a joint account.

Q. These stocks that were purchased, did they write them in her name or in both of your names?

A. The bonds—bonds, I don't think had any

(Testimony of Ezra Royce.)

name on them. They're not—they don't have names, I believe.

Q. You mentioned one stock, Pacific, I think you said? A. The Missouri-Pacific.

Q. How much money did she invest in that?

A. Oh, I have forgotten the exact amount. Several—I think she had a considerable amount of Missouri-Pacific stock, of the old issue.

Q. Did she invest in that at your advice and suggestion? A. I think so.

Q. You were interested in that stock, weren't you?

A. I bought some of it, too. Considerable, in fact.

Q. Now, did she invest any more money in any of these stocks that you know of?

A. It seemed to me that she had some Northwestern bonds at one time, too.

Q. You don't know the amount, or how much?

A. No, I don't, and she had some Missouri-Pacific bonds and quite a lot of Government bonds.

Q. And you don't know whether that you took title jointly, or in your name? A. No.

Q. Don't know any of it?

A. No, we did not.

Q. Now, that meant—that means a considerable amount of money that hasn't been accounted for, now, did you borrow that money from her?

A. No, she invested that money in the Aldergold Copper Company, a considerable amount of it, along with myself.

(Testimony of Ezra Royce.)

Q. Now, you were the—— (interrupted)

A. On a loan basis.

Q. On a loan basis?

A. That was on a loan basis, yes.

Q. To you?

A. No, to Aldergold Copper Company.

Q. Now, the Aldergold Company—the gold mine and copper mine, that you had the primary stock interest in it?

A. You mean—I don't quite understand.

Q. You were promoting that corporation, were you not?

A. I owned about five per cent of the stock in it. Is that—— (interrupted)

Q. The common stock? [232] A. Yes.

Q. Didn't you have much more stock than that in that? A. No.

Q. You—didn't you have over a million shares in it? Stock? A. Oh, no, indeed I did not.

Q. Do you have the books of that company here?

A. No, I do not. Mr. Magne (phonetic) is the Secretary of the company. No, I never had a million shares.

Q. Would you please explain just how this was loaned to the company—this money that belonged to Dora was loaned to the Copper Company—the Aldergold Copper Company?

A. Well, I don't—it isn't quite clear to me. A loan is just made as a loan, and a note taken for it.

Q. She had a little interest in that corporation?

(Testimony of Ezra Royce.)

A. She had a little stock in it.

Q. You were primarily the one that was interested in it?

A. Well, yes. I had about five per cent in it. She had some stock in it, not a great lot. But she was very much enthused in the company, and she thought it had great future and possibilities.

Q. Now, again on that, she made this loan to the Aldergold Company at your advice and suggestion?

A. Not altogether. She—she made many trips up there with me, and was very enthusiastic about it.

Q. How much money did she loan this company?

A. Oh, probably in the neighborhood of seventy-five thousand, or thereabouts.

Q. Now, actually, this company was in developing stage at that time?

A. Yes, you might say that. It was in operation though.

Q. It didn't start operating, did it, until 1950?

A. It might be—'49, I am inclined to think.

Q. In other words, the—— (interrupted)

A. But the whole—the thing was being built and organized and so on and so forth.

Q. And you were the main promoter and organizer of that company?

A. Well, I don't know as I could be the main promoter and organizer—Mr. Stone, Mr. Magne and Mr. Schneider (all phonetic) were very active in it too.

Q. However, during that period of time—the

(Testimony of Ezra Royce.)

years in question, 1944 and 1947, it was definitely in a development period, and you—it was a—it was just a prospecting proposition?

A. No, it wasn't a prospecting proposition. It was a mine that had considerable tonnage of ore developed.

Q. Now, when was that tonnage developed?

A. Well, it was developed quite a good many years before that. Not by our group. Our group wasn't the one that done that work. That had been done some time before. Maybe a good deal of that development, I think, took place about thirty years before.

Q. Now, tell us just what was done in the way of development [234] on that, and what status the development was in in this period, 1944 to 1947?

A. Well, you mean the status of the property on the development basis? Well, it had about, I would say, probably—oh, three or four thousand feet of tunnel work in it, and probably had two hundred and fifty thousand tons of ore developed. Some hijackers got into it then and took a lot of it out.

Q. Now, that note, you said you took a note on that?

A. Uh huh.

Q. For seventy thousand dollars?

A. I stated it was somewhere in that neighborhood.

Q. Do you have the note here?

A. No, I do not.

(Testimony of Ezra Royce.)

Q. Now, isn't it a fact that that note was made out to you—payable to you?

A. There's quite a sheaf of notes and just off-hand, I couldn't tell you.

Q. You were selling preferred stock in 1947, weren't you, in that company? A. Yes.

Q. And for every share of preferred stock, you were getting two and a half shares of common stock?

A. Giving two and a half shares, yes, that's right.

Q. You had over a hundred thousand shares of the common, did you not? [235]

A. You say did I have?

Q. Yes. A. Personally, myself?

Q. That is correct.

A. Yes, I have—I have over a hundred thousand shares. I think it is about five per cent, I believe.

Q. Now, isn't it a fact that the common stock account of that company, Aldergold Copper Company, shows you having over a million shares of common stock?

A. No, that's a trust. That million shares is a trust that was deposited with the old National Bank in Spokane. That stock does not belong to me. [236]

* * * * *

Continued Re-recross Examination

Q. (By Mr. Picco): We were discussing the Yellow Cab partnership of Portland. A. Yes.

Q. We were discussing the Aldergold Mine Com-

(Testimony of Ezra Royce.)

pany? You testified that seventy thousand dollars of the money distributed to Dora Royce was invested in that mine, is that right? A. Yes.

Q. And that actually was money that was used by you in the promotion and sale of the stock in that company? A. No.

Q. And you said there was a note that was made payable to whom?

A. I didn't know—I have stated that I didn't know exactly what that situation was, that I would have to look it up over the weekend.

Q. And you are going to bring that in Monday?

A. I will see what the situation is, and have the answer for you Monday. [237]

Q. Now, that accounts for the principal amount of Dora's—Dora Royce's distributive share of the partnership earnings, does it not? A. Yes.

Q. And outside of payment for taxes and for the small amounts that she made on the basement in the home, the improvements around the house, it went primarily into this gold mine?

A. I think about seventy thousand dollars, I believe, yes. Of course, the repairs in the home that she put in there was considerable.

Q. Is it fair to state the money was invested primarily in your own personal ventures?

A. Well, I don't know—you couldn't hardly term Aldergold Copper Company primarily my venture. I may have about five per cent interest in it.

Q. You—you promoted and sold thousands and

(Testimony of Ezra Royce.)

thousands of shares of common stock in that gold mine?

A. Well, I didn't sell all that that was in there, you know. There were many people that was doing that besides myself.

Q. But you were engaged in the sale of that stock?

Mr. Jones: If the Court please, on this particular issue, I don't have any objection for Mr. Picco to examining him on it insofar as it might show an inconsistency with any testimony he gave on direct examination. But this is a settled issue—this Alder-gold Mine is a long, drawn-out settled issue—at least, I thought it was settled, and it is not being tried in this lawsuit, and I should [238] feel that any examination on this issue ought to be confined only to conflicting statements.

Mr. Picco: If your Honor please, I do not want to raise any of the settled issues. I am just pursuing the statement he made that seventy thousand dollars of that went into this gold mine, and I am trying to show that he was primarily interested in the sale and promotion of that gold mine stock.

The Court: I suppose your theory back of that is—— (interrupted)

Mr. Picco: He practically had the use of that money—— (interrupted)

The Court: —that his wife invested in his ventures, and in that way, subject to his dominion. I suppose that is your theory?

Mr. Picco: That is correct, your Honor.

(Testimony of Ezra Royce.)

The Court: You may proceed.

Q. (By Mr. Picco): So it is a fair statement to make that you actually had use of this money?

A. Well, I don't hardly agree with that, as there being an investment in the Aldergold Copper Company, it is in the form of—would be in the form of a mortgage, which isn't a—seems to me, a part of the mining company's affair.

Q. I have one or two more questions on that, and I will leave it. You did have a contract, dated January 11, 1947, with Mr. Magne and Mr. Stone of Spokane, for the purpose of financing the development [239] of that project. You were to finance the development of that project?

A. To a certain extent.

Q. You did do that, though, did you not?

A. Yes, I did.

Q. Now, I am referring my questions to the Seattle partnership, with reference to Dora Royce. Now, the gift of stock that you made to Dora Royce was April 20, 1944, in connection with this partnership—in connection with this company?

A. Seattle?

Q. That's correct?

A. I think it was in January '44.

Q. Well, anyway, the certificates will show the date on that, Mr. Royce. The corporation was dissolved and the partnership was formed around May 1, 1944?

A. I believe so.

Q. Now, the formation of the partnership was

(Testimony of Ezra Royce.)

conceived at, or prior to the time of the making of the gift of stock, was it not?

A. No, I don't think so.

Q. It was all one transaction, you—— (interrupted)

A. No, I think the gift of stock was made in January.

Q. Did—did you have the same intention of donating this stock as you did in the stock of the Portland cab company?

A. To make her a partner?

Q. Right. A. Yes. [240]

Q. And you considered her morally obligated to enter that—to become a partner and to enter the partnership agreement? A. She did.

Q. You did consider that, at the time of giving the gift—that was the understanding between you and Dora Royce?

A. No, not particularly. When I gave her the stock, I just gave her the stock. Now, if she decided that she didn't care to stay in the company, she was under no obligation to do so.

Q. Now, is this a change in your story from what you said this morning?

A. I don't think so.

Q. Now, as far as the distribution of the earnings of the Seattle partnership, what happened there—what was the explanation—how was it distributed to Dora Royce?

A. Just, I turned in my original certificate, and had new certificates made.

(Testimony of Ezra Royce.)

Q. Yes, I appreciate that, but the distribution of the partnership earnings—did Dora Royce get those? A. Oh, yes.

Q. In what form?

A. In proportion to her ownership.

Q. Were checks made out, or did she get it in currency? A. Oh, no, she got it in checks.

Q. Just as everybody else did?

A. Just the same as everybody else did. [241]

Q. Now, do you have those checks here?

A. No, I don't have them.

Q. I have a—you were required to bring checks, anything along that line, to indicate just how that distribution took place, in the subpoena duces tecum, weren't you?

A. Well, they may be here, but I don't have them.

Q. Don't you have checks that were made out to Dora Royce in 1945?

A. From the Seattle company?

Q. Yes.

A. Oh, I think that the company, of course, would have them back again, but I believe they are here someplace, I am not sure.

The Court: At the time of these distributions, did you make proportionate distributions to all the—— (interrupted)

A. Yes, in accordance with their percentage of ownership.

The Court: Periodically?

A. Yes. Well, I couldn't say exactly at any defi-

(Testimony of Ezra Royce.)

nite time. They were made whenever the funds were available—where the company didn't need them.

Q. The set of the checks that were received by Dora Royce, weren't they endorsed in blank to you?

A. Endorsed in blank to me? No.

Q. Did you borrow any of that money from Dora Royce?

A. I don't recall having done so.

Q. Do you know how the money was invested—or what she did with the money? [242]

A. Well, for some time there, she kept quite a bit of it on hand, I believe. She used her own judgment as to what she'd done with it. It was not under any of my control.

Q. You don't know anything about it?

A. Well, I know she had money on hand. I don't know—I didn't pry into her affairs to see exactly how much and so on and so forth.

Q. You didn't borrow any of the money from her to invest in your enterprises?

A. I don't recall having done so.

Mr. Jones: Mr. Picco, you are speaking about which monies now?

Mr. Picco: The monies she received from Seattle Cab.

Q. You made the statement this morning that your wife Dora Royce often went up to Seattle with you, in connection with the business of the partnership, isn't that right?

A. Well, I—oftentimes when I went up, why, she would go along with me, yes.

(Testimony of Ezra Royce.)

Q. Did she use the expression that she would sometimes go up alone and check on things up there?

A. No, I don't hardly think so. I don't recall her having gone alone. She may have once or twice, but I don't recall it.

Q. Now, I am going to ask you questions referring to the partnership interest of Eunice Royce. May I have Petitioner's Exhibit 16, 14 and 18 and 15? [243]

The Clerk: What was the other one—14?

Mr. Picco: Fourteen.

The Clerk: Sixteen?

Mr. Picco: Sixteen and fifteen next.

The Court: Mr. Royce, you have spoken about investments that your wife made in your home, furnishings and so forth—home furnishings and construction, did you participate in those at the same time?

The Witness: Did I furnish the money?

The Court: Contribute part of the money?

The Witness: No. Anything that she wanted, she just went ahead and done it herself. She consulted me about it, that she would like to do it, and then just went ahead.

The Court: You didn't contribute like amounts?

The Witness: No.

Q. (By Mr. Picco): Incidentally, in connection with the partnership in Seattle, do you know who performed the checking duties which Dora did in Portland—Dora Royce did in Portland?

(Testimony of Ezra Royce.)

A. They have had, over the years, quite a good many people doing that sort of thing. A man by the name of Weaver (phonetic) I am particularly familiar with, that has been doing that work for years.

Q. He was an ordinary employee of the company?

A. Yes, he's not an ordinary employee, I wouldn't say, but he's an excellent top-flight man.

Mr. Jones: I can't quite hear you, Mr. Royce.

A. I say I wouldn't consider Mr. Weaver an ordinary employee. He's an excellent, top-flight man—would be hard for us to replace.

Q. I hand you Exhibit Number 16, which represents the gift tax return for yourself and the donee return for Eunice Royce. A. Yes.

Q. I want you to look at the donee return. That is signed by Ezra Royce, trustee for Eunice Royce, is that right? A. Yes, that's correct.

Q. Now, did you regard Eunice as a partner in this firm, or how did you do it?

A. Yes, I consider her a partner, yes.

Q. You considered Eunice a partner?

A. Yes.

Q. And you were acting in a—agency capacity for her?

A. Well, I would think so, yes. She was a minor at that time.

Q. I hand you Exhibit Number 15, which is a declaration of trust—this is a copy—no. I hand you Exhibit No. 18, which is the partnership agreement,

(Testimony of Ezra Royce.)

and ask you to look at the last page, where the signature is on, and how did you sign that, for Eunice?

A. E. M. Royce—Eunice Mae (phonetic) Royce by E. Royce, trustee.

Q. So that when it says E. M. Royce, it has reference to Eunice M. Royce? [245] A. Yes.

Q. Again, you were signing there as if Eunice was the partner, is that correct? A. Yes. [246]

* * * * *

Q. (By Mr. Picco): What was your interest in Yellow Cab, Seattle, prior to the gift of stock to Eunice and to Dora Royce?

A. Percentagewise?

Q. No, the number of shares?

A. I don't recall the exact number of shares.

Q. Was it fourteen hundred and two shares and a half? I think it has been stipulated in one of the exhibits that that was the number?

A. I believe that is probably about right.

Q. Now, you—you made a gift of seven hundred shares to Eunice, and four hundred and two and a half to Dora Royce? A. Yes.

Q. Who owned the controlling interest in the partnership in Seattle?

A. There wasn't any—any one person that owned the controlling interest.

Q. You and B. Royce, and the respective members of the family, owned fifty or more per cent of the stock—of the interest of the partnership, did they not?

(Testimony of Ezra Royce.)

A. I think my brother and I owned fifty-one per cent at some time. [247]

Q. Do you know whether any trust returns were filed, during the years in question?

A. Tax returns?

Q. Trust tax returns, yes?

A. I don't know. I am not familiar enough with the tax returns to know a trust tax return when I see it, I don't believe. I think all the returns have been filed, but I—— (unfinished answer)

Q. I hand you Respondent's Exhibit ZZ, which is the income tax return—the partnership income tax return, the amended one, for 1948—I'm sorry, the individual income tax return for 1947, amended, by Eunice Mae Royce, and I ask you to look at the signature there, and you signed that how?

A. Eunice Mae Royce, by E. Royce, trustee.

Q. Yes. Now, that's the same on all of these, Respondent's Exhibit YY, for the year 1947, is that correct?

A. That was signed E. Royce, trustee.

Q. That was signed "E. Royce, trustee."

A. Her name doesn't appear on that, for some reason.

Q. I give you Respondent's Exhibit double-X, which is the amended return for 1946 for Eunice Royce, and how did you sign that?

A. E. Royce, trustee, for Eunice Mae Royce.

Q. Now, these were all on—all on ten forty returns, were they? There weren't any trust returns filed there, is that correct?

(Testimony of Ezra Royce.)

A. I don't know what you consider—I am not too familiar—— (interrupted) [248]

Q. This is on the regular individual return?

A. Seemed to be all the same, yes.

Q. Now, I want to show you Respondent's Exhibit double-V, for 1945, for the return of Eunice M. Royce. Now, is there any signature there, at the bottom of that one? A. No, there isn't.

Q. It hasn't been signed, has it? Can you explain that to the Court, just what happened in that instance?

A. I certainly cannot. I can't understand that.

Q. Now, I want to find out just what you did with the money that was distributed from the partnership to Eunice Royce. Now, you received that as trustee, did you not? A. Yes.

Q. Was it—did it come in by way of checks?

A. Yes.

Q. And it was payable to you, or to Eunice, trustee, by—just tell us how it was done?

A. Well, I—just exactly how the check was made out, I don't know, but it came—it came along in proportion to her ownership, the same as to all the rest of the partners, and I deposited the check in the United States National Bank.

Q. Now, every time you received a check, payable to you, trustee, or to Eunice, by you, trustee, you put that in this passbook which is Exhibit 37?

A. Yes. The United States National Bank. [249]

Mr. Picco: May I have Petitioner's Exhibit 37, and also 38, 39, 40 and 41?

(Testimony of Ezra Royce.)

The Clerk: Forty and 41 haven't been in yet. Which one did you—— (interrupted)

Mr. Jones: Thirty-nine—I spoke of 40 and 41, but I stopped at 39.

The Clerk: You put them in as one exhibit? That is 39.

Q. (By Mr. Picco): This is Exhibit 37, and is this the bank book that you are referring to?

A. Yes.

Q. Now, you say all the money went into that bank—into that bank account? A. Yes, sir.

Q. That was distributed from the partnership?

A. Yes.

Q. And are these—this is Exhibit 38—there seems to be some checks? A. Yes.

Q. Are those checks that are going out of the bank account? A. Yes.

Q. And to the people that are shown payable therein? A. Yes, that's right.

Q. Does that constitute all of the checks that were in the bank account, or is there still some in the bank account, for the years in question? [250]

A. No, there's—there are a few—there are a few checks that are missing in these here. But Mr. Niederkrome made the record and he has those all in the record.

Q. I want you to go—— (interrupted)

A. I don't know where they have gone to here.

Q. I want you to go over each one of these checks and tell who the payee is, and tell us just what sort of an investment that was?

(Testimony of Ezra Royce.)

A. That was for—— (interrupted)

Q. Now, that's number one—the number one check, of Petitioner's 38?

A. That is a Government bond.

Q. That was payable to Yellow Cab Company?

A. Yes. That was for a Government bond. E bond.

Q. What happened to the bond?

A. I think she still has it.

Q. Was that for her? A. Yes.

Q. Why was it paid to Yellow Cab Company?

A. Well, the Yellow Cab Company had a permit to handle United States Government bonds, and still has it.

Q. Let's take the next one.

A. So that is the reason we could buy them——
(interrupted)

The Court: I can't hear you when you turn your head the other way. [251]

A. We could buy the bonds directly at the Yellow Cab Company because it had some kind of a permit from the Government—I believe it's the Post Office Department, to sell bonds to its employees. Some kind of an arrangement—I don't know just exactly how it works.

Q. We will just put this at the bottom, and take the next one. Check number two.

A. That is J. W. Maloney (phonetic), Collector of Internal Revenue.

Q. That is two thousand dollars?

A. Two thousand dollars.

(Testimony of Ezra Royce.)

Q. That was for payment of the tax?

A. Yes. And J. W. Maloney—— (interrupted)

Q. That's check number three. I'll call out the check number in each one of them.

A. All right. Eleven hundred and sixteen dollars and sixty-five cents.

Q. Number four?

A. Oh, I see. That again, is for another bond— hundred dollar bond. And J. W. Maloney—— (interrupted)

Q. That's number five.

A. ——Collector, two thousand dollars. Check number five. Check number six is missing. Check number seven is J. W. Maloney, seven dollars and five cents. Check number eight is J. W. Maloney, [252] Collector, two thousand dollars.

Q. That will be enough for a while now.

A. There is another one for—— (interrupted)

Q. They were all about the same, small amounts to Yellow Cab Company, is that right?

A. That was for bonds also.

Q. A hundred and thirty-one dollars?

A. Yes, a hundred and thirty-one dollars, and—I think that is for seven—— (interrupted)

Q. Tell us something about check number ten, dated December 29, 1945?

A. That was a loan to me.

Q. In what amount?

A. Twenty-five thousand dollars.

Q. Can you tell us anything further about it? Have you ever paid it back? A. Not yet.

(Testimony of Ezra Royce.)

Q. That was in 1945? A. Yes.

Q. Did you have—did you give her a note or anything for that? A. Yes.

Q. Did you ever pay any interest on it?

A. Not yet, no.

Q. Do you have the note? [253]

[No answer.]

Q. Do you have the note here?

A. Yes. I believe the note's in here.

Q. It's not in evidence, no. Check number eleven, dated January 14, 1946, is for twelve thousand three hundred and sixty dollars, that's— (interrupted)

A. J. W. Maloney, twelve thousand three hundred and sixty dollars.

Q. Payment of taxes, that is?

A. That is correct. Check number twelve, J. W. Maloney, Collector, seven thousand five hundred and forty-two dollars and six cents.

Q. Just a second, on these two, they are dated—are these the payment of taxes for Eunice Royce?

A. Yes; yes.

Q. They're not being used for yours?

A. Absolutely not. Number thirteen is a check for J. W. Maloney for four thousand dollars.

Q. Let me go along. We want to cut the time a little on this. That is also the payment of taxes?

A. Yes.

Q. And the next check is payment of taxes, in four thousand dollars? And here is one July 10, 1945 — '46 — check number fifteen — tell us about that?

(Testimony of Ezra Royce.)

A. That is a check for two thousand dollars, made to me.

Q. Is that a loan to you—to yourself? [254]

A. Yes.

Q. Trustee to yourself? A. Yes.

Q. Now, did you give a note on that or was it an account?

A. No, I did—I gave a note on that.

Q. And that hasn't been paid?

A. I think that has been paid, but I would have to dig up the records, and that may take a little time to do it, so—— (interrupted)

Q. When was it paid?

A. I think it was paid shortly after this. I wouldn't be sure about it. I would have to—— (interrupted)

Q. Are you sure it wasn't paid after the investigation—— (interrupted) A. No, no.

Q. ——by the agents? A. No.

Q. Check number sixteen is for payment of taxes, four thousand dollars?

A. Four thousand dollars.

Q. Ten thousand dollars, check seventeen, payment of taxes? A. Right.

Q. Nineteen, payment of taxes? A. Yes.

Q. Four thousand dollars?

A. Right. [255]

Q. Now, here is a check you may explain?

A. Check number twenty-two, Eunice M. Royce, two hundred dollars, December 1st, 1947.

Q. Is that the one you were talking about this

(Testimony of Ezra Royce.)

morning? About the two hundred dollars that was given to Eunice? A. I don't recall that.

Q. Now, this small amount here of two hundred dollars, was that for personal expenditures?

A. Yes.

Q. At school, or someplace?

A. Well, for just whatever she wanted it for.

Q. Check twenty-three, of six thousand dollars to the Collector of Internal Revenue?

A. That's right.

Q. That's for her taxes? A. Yes.

Q. Here's check twenty-four, to Eunice M. Royce, for three hundred dollars?

A. Three hundred dollars.

Q. That's for personal expenditure?

A. Yes. Shall I go on with another one?

Q. I will see if I can't shortcut this. Most of these checks are payable to the Tax Collector for taxes? A. That's right.

Q. A few in small amounts payable to Eunice, and two or three [256] larger amounts payable to yourself, is that correct?

A. There's quite a few of them payable to Eunice.

Q. What is this? A. That was a loan.

Q. Will you describe—this is check thirty-four, dated November 23, 1948, and you—— (interrupted) A. Royce, Incorporated.

Q. You made it payable to Royce, Incorporated?

A. Yes.

Q. For one thousand dollars?

(Testimony of Ezra Royce.)

A. That's right.

Q. What did that represent?

A. That was a corporation which—that owned some property here in Portland, and I made a loan, and these totals here, I think amount to seven thousand one hundred dollars—— (interrupted)

Q. You were loaning from the trust again here, is that correct?

A. And they paid interest on it, and she got the—— (unfinished answer)

Q. You were paying this—you were paying this to yourself, weren't you? A. No; no; no.

Q. Will you ex—— (interrupted)

A. Royce, Incorporated is a corporation that owns the Columbia Athletic Club building.

Q. Well, why was this payment made to Royce, Incorporated? [257]

A. Well, she had funds, and so I just took it from her account and loaned it, and they paid interest on it.

Q. In other words, you borrowed it?

A. Not me, no. The corporation borrowed it.

Q. Here's another one, check thirty-seven, dated February 3rd, 1949?

A. That was part of the same—— (interrupted)

Q. That was made payable to Royce, Inc.?

A. Royce, Inc., same thing. And then there is another one in there somewhere for five thousand dollars on the same thing. It amounted to seventy-one hundred dollars.

(Testimony of Ezra Royce.)

Q. Now, she is loaning to this corporation, is that what she was doing here? A. Yes.

Q. And will you tell us something about the corporation, Royce, Inc.?

A. It owns the Columbia Athletic Club building, on 11th and Alder.

Q. Now, you own the controlling stock interest in that?

A. Well, no, I own half interest in it, and two other fellows own the other half.

Q. You were interested in seeing that some loan was made to the corporation?

A. Well, I could have just as well made it myself, as far as that goes, but I thought it would be probably better from her standpoint [258] that she make it.

Q. You were thinking in terms of a good investment for her or just—— (interrupted)

A. Yes.

Q. ——because you were short of funds?

A. No, no. No, it was a good investment. The interest was paid, the loan was paid.

Q. Has the loan been paid? A. Oh, yes.

Q. That takes care of all of these checks, which is Exhibit 38. Now, was there any—any balance left in the bank account, after using up those checks?

A. Yes.

Q. Very much?

A. Yes, sizeable sum. Mr. Niederkrome has the—— (unfinished answer)

Q. What sort of investments did you make out-

(Testimony of Ezra Royce.)

side of this—payment of taxes and payments to yourself in the form of a loan—what other investment did you make for this trust—for Eunice?

A. Oh, I don't recall just at the minute.

Q. As a matter of fact, you didn't make any other investments except that, did you?

A. Yes, I think there has been some investments, yes.

Q. But generally, they are of the type of order that we have just given—you have just referred to now, in your testimony? [259] A. Loans?

Q. Loans, yes? A. Yes.

Q. Now, I hand you Petitioner's Exhibit 39, and ask you again to tell us what that is?

A. Those are—that is a copy of a note that I gave to Eunice's account.

Q. Let's take that one up first. Now, that note is dated July 7th, 1952? A. Yes.

Q. Now, that refers to sixty thousand dollars?

A. That's right.

Q. Now, when did you borrow that money?

A. Some time in either '45 or '46.

Q. And that's not the—that's the—you classify that as a renewal note, is that correct?

A. This is, yes.

Q. And do you have the cancelled note?

A. Yes, I said this morning I thought I did have.

Q. Will you bring that?

A. Yes, I will. I will do that.

(Testimony of Ezra Royce.)

Q. Now, was any interest paid at all on the old note? A. There were some payments there.

Q. These payments were made in 1954, is that correct? A. That's correct. [260]

Q. Now, is that payment of principal, or payment of interest? A. Payment of principal.

Q. Just the first note, please?

A. Payment of principal, I think. I believe that the interest is accrued, it will be paid.

Mr. Jones: A little louder.

A. I say the interest has—is accrued and will be paid.

Q. As far as this—this is—we are now referring to the note dated July 7, 1952, that is correct, isn't it? A. Yes.

Q. Now, let's go to the note dated December 26, 1953, and tell us about that. That is a note for twenty-five thousand dollars? A. Yes.

Q. And again, it's signed by you, and it's payable to the order of Eunice M. Royce?

A. That's right.

Q. Now, it's not payable to the trust at all there, is it?

A. Well, that's what is meant by it.

Q. In fact, the one before is the same one—is the same way? A. Yes.

Q. Now, you didn't sign that as—yes, you did, too. Now, that's twenty-five thousand dollars. When was that borrowed?

A. I think that's a renewal note too.

Q. You borrowed that back in 1945, '46?

(Testimony of Ezra Royce.)

A. The exact date, I don't know. Mr. Niederkrome would have [261] that information.

Q. That's when you think it was?

A. Yes.

Q. Now, did you pay any interest on that note—on the old note—the cancelled note?

A. No, there hasn't been. That is accrued also.

Q. I would like to know why you cancelled the other notes?

A. Well, I didn't want them to outlaw.

Q. Is that the reason why?

A. Yes, that's the reason.

Q. But no interest was paid on any of those notes, is that correct?

A. No. I think though, this one was paid.

Q. Now, you're—you're not referring to the note for twenty-five thousand dollars? A. No, no.

Q. Now, we will take up the note dated July 10, 1951. That is in the amount of two thousand dollars? A. Yes.

Q. Now, that was borrowed back in the tax years too, was it not?

A. I think it was probably in '46—maybe possibly '47, but I think it was '46. He would have that date.

Q. The old note is available around here on that? A. Not here, I don't think. [262]

Q. Did you cancel that too, for the same reason, that you were afraid that it would be outlawed?

A. Yes, I think so. But I think that one is paid. I will have to dig into it.

(Testimony of Ezra Royce.)

Q. Now, are you sure that that was paid?

Mr. Jones: The Court isn't hearing a thing you're saying.

A. Oh, pardon me.

The Court: It's rather important that I hear it.

A. Yes, that's right. I'm sorry. You see—part of that is paid there, about half of it.

The Court: Don't turn your face away. Please keep your face turned this way.

Q. Is this payment of interest or payment of principal?

A. I took it as a payment of principal.

Q. Now, this payment of about nine hundred dollars there—almost—— (interrupted)

A. Ten hundred and fifteen dollars.

Q. That was paid in 1953 and 1954?

A. Yes.

Q. And nothing was paid on the cancelled note?

A. No.

Q. In connection with that. Now, did that account for all of the money that went into the Eunice Mae trust?

A. Yes, it does.

Q. So that outside of payment for taxes, and a few amounts for [263] personal living expenses of Eunice, it went into your own notes?

A. Besides what's left.

Q. That is the principal amount went into your own notes?

A. Taxes and my own notes.

Q. All told, how much do you owe the trust—owe Eunice Mae Royce?

(Testimony of Ezra Royce.)

Mr. Jones: If the Court please, I would like that answer and question restricted to 1949.

Q. Yes, at that period of time?

A. At the end of 1949—eighty-seven thousand dollars.

Q. What kind of interest were you promising to pay? A. Three percent.

Mr. Picco: I have no other questions on these matters, your Honor.

The Court: Do you have any further questions?

Re-re-redirect Examination

Q. (By Mr. Jones): I would like to ask a few questions here. On this Aldergold Company number of shares that you have, Mr. Royce, in your own name, in your own right, how many, do you recall?

A. It's about five percent, or I think about a hundred thirty-four thousand. The exact number I am not—— (interrupted)

Q. I have a figure of a hundred and thirty-four one forty-eight, does that figure sound familiar to you? A. That sounds right. [264]

Mr. Picco: What was that answer?

Mr. Jones: What?

Mr. Picco: What was the answer?

Mr. Jones: A hundred and thirty-four thousand, one forty-eight.

Q. Mr. Royce, were there ever trouble on the drivers not—of the taxicabs not always turning in the full amount of the fares or the correct number of passengers? A. Oh, yes; yes.

(Testimony of Ezra Royce.)

Q. Is that one of the reasons—— (interrupted)

A. Very often.

Q. Is that the reason you have to have a very confidential person checking?

A. That is correct.

Q. One of the reasons?

A. Yes; very important.

Q. Now, you—do you have other interests besides the Yellow Taxicab Company that demand a portion of your time? A. Yes, I do.

Q. And what proportion of your time would you say that you devote, during the periods here involved—or the particular period involved in Portland, 1944 through 1947, how much time would you figure that you personally devoted to the affairs of the taxicab company?

A. Well, there were times when I couldn't devote very much; and other times, I had more. [265]

Q. Well, can you strike any fair average percentage?

A. Oh, probably, was in the office half the time—in that neighborhood, I guess.

Q. Well, now, when you—you spoke this morning about the garage, shop and office?

A. That's right.

Q. Well, what does the half time embrace?

A. I mean it would cover those three places, the garage, and the shop and the office.

Q. And the other half of the time was at other affairs? A. Yes.

Q. Now, when you were in the office, was your

(Testimony of Ezra Royce.)

time exclusively devoted to the taxicab company business? A. No, it was not.

Q. What would you use it for?

A. Oh, various other things that I would have to take care of.

Q. People about your other interests would come in and talk to you? A. Yes, a good deal.

Q. Letters to write about them? A. Yes.

Q. Now, Mr. Royce, I want to call your attention to this gift tax return—16, I believe it is. I wish you would take a look at that and see if that in any way refreshes your memory on the time—of the time when the stock was actually given?

A. (After examining Exhibit) It's dated March the 15th.

Q. Well, that's 1945 when you filed it, isn't it?

A. Yes, that's right.

Q. Well, is there anything on there—on the face of the return in the—— (interrupted)

A. Oh, yes, January 1945—'44—January, 1944, that's right, on both of them; that's right.

Q. Now, then, having—do you have an independent recollection of the time of the gift, aside from this gift tax return?

A. Well, my recollection was that it was just shortly after the first of the year—just a few days.

Q. Now, the fact that the stock certificate may have not been dated until April—can you explain that?

A. Just at the moment, I can't, no. I don't know how that came about.

(Testimony of Ezra Royce.)

Q. May I see the stock certificate—that is Exhibit number 14? (Exhibit handed.) The stock certificates appear to be signed by Mr. Wenck and yourself as President, and Mr. Wenck the Secretary, and they appear to be written in a hand different than either of yours, do you know anything about looking at that, and the data, that would recall to you any reason why the certificates are dated subsequent to the gift tax returns?

A. (After examining Exhibit) No, it doesn't recall to my mind anything; not just at the moment.

Q. Is it your best recollection that the gift of the stock was [267] actually made in January?

A. Yes; that's right.

Mr. Jones: That's all, thank you.

Re-re-recross Examination

Q. (By Mr. Picco): Mr. Royce, you say that Dora Royce had charge of appearance and cleanliness and things like that around the shop—I am talking about the Yellow Cab, Portland—her services?

A. No. No, I don't think I said that.

Q. Didn't you state that she had very miscellaneous duties, involved with checking on this and that?

A. On the street.

Q. She was called the—— (interrupted)

The Court: Your question was "around the shop," I have no such information.

A. No, I didn't refer to a shop. What she would do was to check on cleanliness of the cabs, the appearance of the drivers, cleanliness of the uniforms

(Testimony of Ezra Royce.)

and things of that kind, out on the street, not in the shop.

Q. Now, if she was doing that, she would get to know the drivers very well, wouldn't she?

A. No.

Q. They would get to know her very well?

A. Oh, they'd spot her all right, but she made no attempt to get acquainted with the drivers. That was the thing to keep away from. [268]

Q. Well, how do you explain your statement then that she had a confidential job in checking up for unpaid fares? If she was well-known to the drivers?

A. No, I wouldn't say she was well-known to the drivers. They didn't have any idea that she was doing that kind of work. The minute they get wise to the fact that someone is doing that kind of work, their usefulness is gone, so she kept in the background in that respect entirely.

Q. Now, on that stock certificate, Exhibit 14—the date on that is April 20, is it not?

A. Yes, it's April 20th.

Q. Doesn't that fix in your mind what time the gift of the stock was made?

A. No, I don't know why that's made that way, but the gift of stock was made in January.

Q. Now, you mentioned something about receiving some one hundred and thirty-four thousand shares of common stock of the Aldergold Copper Company?

A. That's what I have, yes.

Q. Well, I just want that explained to the

(Testimony of Ezra Royce.)

Court, so he will understand what you mean by that?

A. I don't know just what kind—what your——
(interrupted)

Q. How did you arrive at that number?

A. That's the statement from the Secretary of the company.

Q. This statement is not in evidence at all. I am just wondering [269] to know how you knew about it?

A. Well, I knew it was about five percent, and the Secretary of the company made that statement to show what it was.

Q. Actually, are you trying to say you don't know exactly the number of shares you did have in the Aldergold Company?

A. The exact number? No, I did not.

Q. Now, do you know what the capital account of the Aldergold Company showed you as being the owner of?

A. Well, that is what their account would show that I was the owner of. If you are talking about that trust account, and which I was not the owner—— (unfinished answer)

Q. Well, I wish you would explain that trust account—I am very seriously wanting to find out about that trust account, if you know anything about it.

A. Well, it was a trust account created there so that I would have some control in voting and so on and so forth.

(Testimony of Ezra Royce.)

Q. Now, that—there was over a million shares involved in that, were there not? A. Yes.

Q. And you were supposed to have control over those shares?

A. The trust certificates, yes. No, the common stocks were the ones that were in the trust, and they were—then there were trust certificates issued against that.

Q. You were going to have voting privileges over one million shares of the common stock that you weren't supposed to own it? [270]

A. I didn't own it.

Q. That, if you can explain it, I would like to have you explain that?

A. Well, as I said, that was put in escrow in the old National Bank in Spokane, and trust certificates were issued against that, and went along as a bonus on the preferred stock; but the common stock was still—stayed there, and I had the voting rights on that, for a period of ten years. [271]

* * * * *

F. C. NIEDERKROME

a witness recalled by the Petitioners, assumed the stand and testified as follows:

The Court: You will remember that you are under oath.

Mr. Jones: This witness—has he been sworn?

The Clerk: He was sworn the other day.

Mr. Jones: Oh, yes. This witness' testimony at the present time is on the Hippodrome Amusement Company issue. If the court please, it is stipulated that during the year 1945, the Hippodrome Amusement Company was, and now is a corporation, organized under the laws of Oregon, and that in 1945, the issue of outstanding stock of such corporation was, and now is, owned as follows: E. Royce, two hundred and eighteen shares; B. Royce, a hundred and eleven shares; F. C. Niederkrome, nineteen shares; Stephen Bartel, five shares; and total issued in outstanding shares, three hundred and fifty-three shares.

Direct Examination

Q. (By Mr. Jones): Mr. Niederkrome, are you a Director of that corporation?

A. Yes, I am.

Q. And are you an officer of the corporation?

A. Yes.

Q. What is your office? A. Secretary.

Q. As well as being Secretary, are you the Auditor for the [273] corporation?

A. Yes, I am.

(Testimony of F. C. Niederkrome.)

Q. Did you bring the minute book of the corporation to court? A. I did.

Q. It was asked this morning if there were any minutes with respect to a post office negotiation for the building of a post office at Seaside. Did you look through the books for that purpose?

A. Yes.

Q. Are there any such minutes?

A. There is—there are.

Q. May I—would you refer to them, please?

A. (Referring to minutes) These are the minutes.

Q. Would you resume the witness stand? Have you ever shown me those minutes? Have I ever seen them before, so far as you know?

A. No, you haven't.

Q. I don't know what I am asking for, but I would like to have you read them. What date was the meeting held?

A. (Reading) "Hippodrome Amusement Company. Special meeting of Board of Directors held April 19, 1954."

Q. April 19th? A. 19, 1954.

Q. Please read any motion or resolution or discussion as it pertains only to the post office. There is no use reading the whole record.

A. (Reading) "A quorum was present. Then E. Royce explained [274] to the Directors that he had been negotiating with representatives of the United States Post Office Department on their pro-

(Testimony of F. C. Niederkrome.)

posal to lease from this company, the entire facilities of a building to be constructed on the southeast corner of Edgewood Street and Ocean Way Street, in the City of Seaside, Oregon, together with the ground for building and parking area of approximately five thousand square feet. Approximate cost of construction of the building; probable years rental; and the term of years were fully considered. After careful consideration of the proposal, and any financing, if necessary, the following resolution was unanimously adopted: Whereas, Article 7, of the by-laws require that all instruments under seal, must be authorized by the Board of Directors; therefore, be it resolved that E. Royce as President, and F. C. Niederkrome, as Secretary, be, and hereby are authorized to execute and deliver to the United States Post Office Department, a lease and such other documents as may be necessary or required to complete leasing of the building and land at the southeast corner of Edgewood Street and Ocean Way Street, in the City of Seaside, Oregon. And be it further resolved, that E. Royce as President, and F. C. Niederkrome as Secretary, be, and hereby are authorized, pursuant to Article 7 of the by-laws, to execute such contracts, notes, mortgages, or other instruments as may become necessary to construct and complete the building contemplated under the proposal of the United States Post Office Department to lease, if, and when such lease is approved. No other business appearing, the meeting was adjourned." [275]

(Testimony of F. C. Niederkrome.)

Q. Now, that bears the signatures of F. C. Niederkrome—is that your signature?

A. That's my signature.

Q. Are you acquainted with these signatures?

A. Yes, I am.

Q. Is that the signature of E. Royce?

A. The signature of E. Royce.

Q. Is this the signature of B. Royce?

A. The signature of B. Royce.

Q. When did you—who prepared those meetings—minutes? A. I—I did.

Q. When were they prepared?

A. They were prepared and outlined in the discussion, in the form of a meeting.

Q. But who wrote them up in final draft?

A. I did.

Q. When?

A. The same day. I had them typed.

Q. I have here, Mr. Niederkrome, two exhibits for identification. They are 33 and 34—I am handing you 33 first. It is a photostat. Will you tell me what it is a photostat of?

A. (After examining Exhibit) This is a photostat of the cash journal of the Hippodrome Amusement Company. And it is the right and left-hand side of the journal.

Q. Who keeps those—who kept the record that that is a picture [276] of? A. I do.

Q. Does it show a loan—does it show a sum advanced to Mr. Royce, in December of 1945?

A. It does.

(Testimony of F. C. Niederkrome.)

Q. What date?

A. I don't believe the photostat is all there.

Q. Then we will have to put the originals in.
What account number—— (interrupted)

A. Oh, yes, it is here. December 28th—December 28th.

Q. December what? A. 28th, 1945.

Q. Now, were you present at any meeting of the Directors — the Hippodrome Amusement Company when this was considered — this withdrawal here was considered.

A. Well, it wasn't—the loan request was considered, but it was not a formal meeting.

Q. Where was the request made?

A. In our office at—— (interrupted)

Q. Who was present?

A. E. Royce, B. Royce and myself.

Q. And what was—what was the substance of the conversation?

A. Well, Mr. Royce said he could use this money, and on the basis that if the company would need the money, that he would repay it. It isn't—it wasn't at all unusual, because there have been many [277] times when the company was in financial difficulty, that he advanced money. There were no formal notes signed by the Hippodrome to him, and here was a case where the situation was reversed, and he needed—he wanted—— (interrupted)

Q. A little louder.

A. He wanted to borrow the twenty thousand, so we advanced—we agreed that he could have it on

(Testimony of F. C. Niederkrome.)

the basis that it would be repaid if and when the company required it.

Q. Was that what was said, and the understanding that you and Mr. B. Royce had?

A. That's right.

Q. And that payment to him shows on the books as a what?

A. Amount due as a note as an account receivable, on the books of the Hippodrome Amusement Company against E. Royce.

Q. Is that what it was honestly and truly intended to be, an account receivable?

A. That is what it was intended to be, and is still intended to be.

Q. And do the other interested parties intend that that should be repaid? A. They do.

Q. And has there been any change in its classification on the books since it was entered as an account receivable?

A. Well, the Hippodrome Amusement is on a fiscal year basis—fiscal year ending March 31. Last year, when I prepared the tax [278] returns, and also this question came up about the post office, I noticed that the account that it was charged to involved several other items, and I, on my own volition, without discussing it with anybody, merely set it up as a note receivable. However, I have never asked E. Royce to execute a note.

Q. Well, now, did you owe anything to this company? A. I owe some money.

Q. How much? A. Four hundred dollars.

(Testimony of F. C. Niederkrome.)

Q. When did you take that from the company?

A. In 1948.

Q. And what did you do about it at the same time you—— (interrupted)

A. I also set up an account, note receivable, as to myself.

Q. Prior to the time that these notes receivable accounts were set up, how did this four hundred dollars that you owed show in the books?

A. It was co-mingled with the item charged against E. Royce.

Q. Would you indicate the account and the page of that photostatic exhibit upon which the co-mingled items appear? Just count the pages back?

A. I don't—did you give—this is only the cash journal. There is no ledger sheet in here.

Q. Oh, I will give you the ledger. This is Exhibit Number 34. [279]

A. This is an account titled—bears the account number 103.5, and carried under the name of “Due from Stockholders,” and the first—— (interrupted)

Q. And how much is—— (interrupted)

A. ——entry on that is, is the December entry of twenty thousand dollars.

Q. Where is your entry of four hundred dollars?

A. It appears on the third line, under date of September 30th, four hundred dollars.

Q. May I see the Exhibit a moment? Now, you have been looking at the first page of Exhibit Num-

(Testimony of F. C. Niederkrome.)

ber 34. Now, I am turning to the second page of that Exhibit, and what is that second page?

A. This is an account, entitled "Notes Receivable—E. Royce," and it has our account number 102-C1, an entry on April 1, 1954, for twenty thousand dollars.

Q. Now, while you don't have it there, I see, is there a similar account for you for four hundred?

A. There is a similar account for myself, for four hundred dollars.

Q. All right, now will you refer back to Exhibit Number 33, which is the journal, and show the pages from which these ledger postings came from? Just name the pages—number the pages?

A. It doesn't show any page on here. It shows the—— (interrupted)

Q. No, I mean, is it on the second page of the photostat? This [280] is number two page. What page—just count back—this is number one—count back.

A. Well, this is—on the photostat, it is the second page.

Q. On the second page? Now, what item do you find on the second page of the photostat?

A. An item of twenty thousand dollars.

Q. Under—— (interrupted)

A. Charged to E. Royce.

Q. Under what date?

A. On August—on December 28, 1945.

Q. Then that is when it was carried as an account receivable?

A. Yes.

(Testimony of F. C. Niederkrome.)

Q. Now, then, turn to the page in the journal where that was taken out and put in again as a notes receivable?

A. The page in the journal is—is on April 1, 1954.

Q. Let me see this. Is that the last page of the photostat?

A. That's the last page—I will give you the page number—one, two, three, four—it is page five.

Q. Well, just the last one. Page five, the last page. Mr. Picco has asked for some surplus accounts of this company. I am going to let him ask his own questions, but I will at least identify them for you.

Mr. Picco: All I want to ask. We don't have to put anything in. The earned surplus on December 28th, 1945, was in excess of twenty thousand dollars? [281]

A. I can't definitely say that, because this is a fiscal year corporation, and the earned surplus on March 31, '46, was in excess of twenty-one thousand. Just exactly what it was on December 31, I am unable to say. The previous year, on March 1, '45, the earned surplus was sixteen thousand five hundred and seventy-six dollars and thirty-four cents. After an operation of twelve months later, March 31, '46, we earned during the year, five thousand a hundred and twenty-seven dollars and six cents, making the surplus as at March 31, '46, twenty-one thousand seven hundred and three dollars and forty cents.

(Testimony of F. C. Niederkrome.)

ber 34. Now, I am turning to the second page of that Exhibit, and what is that second page?

A. This is an account, entitled "Notes Receivable—E. Royce," and it has our account number 102-C1, an entry on April 1, 1954, for twenty thousand dollars.

Q. Now, while you don't have it there, I see, is there a similar account for you for four hundred?

A. There is a similar account for myself, for four hundred dollars.

Q. All right, now will you refer back to Exhibit Number 33, which is the journal, and show the pages from which these ledger postings came from? Just name the pages—number the pages?

A. It doesn't show any page on here. It shows the—— (interrupted)

Q. No, I mean, is it on the second page of the photostat? This [280] is number two page. What page—just count back—this is number one—count back.

A. Well, this is—on the photostat, it is the second page.

Q. On the second page? Now, what item do you find on the second page of the photostat?

A. An item of twenty thousand dollars.

Q. Under—— (interrupted)

A. Charged to E. Royce.

Q. Under what date?

A. On August—on December 28, 1945.

Q. Then that is when it was carried as an account receivable? A. Yes.

(Testimony of F. C. Niederkrome.)

Q. Now, then, turn to the page in the journal where that was taken out and put in again as a notes receivable?

A. The page in the journal is—is on April 1, 1954.

Q. Let me see this. Is that the last page of the photostat?

A. That's the last page—I will give you the page number—one, two, three, four—it is page five.

Q. Well, just the last one. Page five, the last page. Mr. Picco has asked for some surplus accounts of this company. I am going to let him ask his own questions, but I will at least identify them for you.

Mr. Picco: All I want to ask. We don't have to put anything in. The earned surplus on December 28th, 1945, was in excess of twenty thousand dollars? [281]

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(Testimony of F. C. Niederkrome.)

Mr. Picco: Better get that in then.

Mr. Jones: Is that satisfactory?

Mr. Picco: Will you stipulate that into this record?

Mr. Jones: What he just said?

Mr. Picco: Yes.

Mr. Jones: Oh, surely. That is stipulated, that those facts are correct. Now, I would like to, at this moment, offer Exhibit 33 in evidence.

Mr. Picco: What was that?

Mr. Jones: I offered Exhibit 33.

Mr. Picco: No objection.

The Court: It will be received.

(Petitioner's Exhibit 33, witness Niederkrome, received in evidence.)

Mr. Jones: Exhibit 34, we offer in evidence.

Mr. Picco: No objection. [282]

The Court: It will be received.

(Petitioner's Exhibit 34, witness Niederkrome, received in evidence.)

Q. (By Mr. Jones): All right. At the same time, in December of 1945, or any time in '45, were any other—were any amounts paid to any of the other—or withdrawn, or advanced to, or loaned to any of the other stockholders?

A. No, there wasn't.

Q. Has any amount ever been withdrawn in any way by B. Royce? A. None.

Q. Or by Stephen Bartel? A. None.

Q. Then you, in '48, and Mr. E. Royce, in '45, are the only ones that have ever made any loans

(Testimony of F. C. Niederkrome.)

from the company? A. That is correct.

Q. My the way, your own loan, is that to be repaid? A. It certainly is.

Q. At the time that Mr. Royce got this, did he say he would repay it? A. He did.

Q. Has he ever repudiated that? A. No.

Q. And has there ever been discussion about when he intended to repay it? [283]

A. Well, this matter of repayment came up for discussion during the negotiation with the Post Office, because it was evident that we would have to have money, approximately way in excess of thirty thousand dollars, and it was then discussed that it would be necessary for he and I both to reimburse the corporation.

Q. And was there a willingness expressed to do that? A. Yes.

Q. Now, then, was there ever—(interrupted)

A. It certainly would not be fair to the other stockholders for us not to repay it and to go out and finance money at a rate—at a higher rate of interest, perhaps.

Q. Was there ever any other attempts to improve that property or—in addition to this post office?

A. We have made improvements down there several years ago.

Q. I am speaking about the Oregon Motor Stages—was there any attempt then to do something—(interrupted)

A. Well, of course, I don't remember too much about that—it was some time ago, but I do know

(Testimony of F. C. Niederkrome.)

that there was negotiation going on. We have always have been trying to get rental—renters and develop new source of revenue, and at that time, Mr. Royce was negotiating.

Q. Were the negotiations at any time with Greyhound Stage Line?

A. He's negotiating with them now.

Q. And if any of those propositions go through, these loans from [284] you and Mr. Royce would be repaid then? A. We expect to repay them.

Q. What is the value of the property down there?

A. Well, the corporation has the book value of somewhere around seventy thousand—net worth of seventy thousand dollars, but that is far below what I think the actual present-day value—(interrupted)

Q. What's your actual idea of the value of the assets on market?

A. Oh, probably a hundred and forty thousand.

Q. Cross-examination—no, I will go to the next issue.

The Court: Net or gross?

A. No, a hundred and forty thousand—the property is worth that much; the lands and buildings, improvements. Net worth is seventy thousand dollars, approximately.

Q. Now, Mr. Niederkrome, we will proceed to the partnership issue in Portland. I believe you testified the day before yesterday that you were the Auditor of this Seattle partnership—or the Portland partnership?

(Testimony of F. C. Niederkrome.)

A. Yellow Cab Company; yes.

Q. Of the Yellow Taxicab Company?

A. Yes.

Q. And that prior to that time, you were the Auditor of the preceding corporation?

A. Yellow Cab, Incorporated, yes. [285]

Q. Yes. Now, you were a Director of the old Yellow Cab Corporation, weren't you?

A. I was.

Q. And that was called, I believe, Yellow Cab, Inc., an Oregon corporation? Incorporated was spelled out, was it?

A. The official name was Yellow Cab, Incorporated, spelled out.

Q. I see. Were you present at a meeting in August—on August 1st, 1942, when a complete dissolution was authorized? A. I was.

Q. And if I recall correctly, those minutes are in evidence here, I will show them to you, Exhibit 34—24, I made a mistake. Thank you. Now, I am handing you Exhibit Number—Petitioner's Exhibit Number 24, and on the front of it is a waiver of notice of meeting. There are several names on it. One, two, three, four, five, six, seven—seven names. Were all the people whose names are on that waiver, were they stockholders at the time? A. Yes.

Q. And they were at the meeting? A. Yes.

Q. Now, is that your signature—of a photostat of your signature—(interrupted)

A. It is, yes.

(Testimony of F. C. Niederkrome.)

Q. —as the Secretary, and you wrote those minutes? A. Yes. [286]

Q. May I see them a moment, please? (Exhibit handed) Now, that was the dissolution meeting of the corporation, is that correct?

A. That is right.

Q. After that, the partnership was organized?

A. Yes.

Q. A bill of sale then went from the partners over to the new partnership, is that correct?

A. That's right.

Q. After the dissolution was made? Now, let me see that, that is Exhibit number 26, please. Well, I guess it just went straight over—in the liquidation from the corporation to the partnership, is that the way it was handled?

A. Yes, that's the way it appears here—from the corporation to the—(interrupted)

Q. Now, what—(interrupted)

A. —partnership.

Q. —a man by the name of Luton, and another by the name of Keefer, is it—Keefer or Keffer?

A. Keffer.

Q. Keffer. They were in the old corporation?

A. They were in the corporation.

Q. And then they are also—are these the same men whose names appear on the partnership articles which are Exhibit 25?

A. They also appear in the bill of sale. [287]

Q. I will show you, Mr. Niederkrome. If you will turn to the signatures on Exhibit 25.

(Testimony of F. C. Niederkrome.)

A. (Referring to Exhibit)

Q. Is that the same Mr. Keffer and Mr.—what do you call him, Luton? A. Luton.

Q. Mr. Luton, who was—who were the stockholders in the preceding corporation?

A. That's right.

Q. And these partners here had been partners—or had been stockholders in the preceding corporation? A. They had been.

Q. Thank you. Now, I would like you to take Exhibits 28, 29, 30 and 31, and explain the capital investment and drawings of the partners in this Portland Yellow Cab partnership? Before you go into any discussion—answer that question, I am handing you Exhibit 31, and ask you to state what it is, please? (Exhibit handed)

A. Exhibit 31 is the surplus account of E. Royce—or, in other words, the profit and loss and drawing account of E. Royce and Dora F. Royce, in the Yellow Cab Company of Portland partnership.

Q. Very well, and are these figures on it made—were they made by you?

A. No, not necessarily. I don't—(interrupted)

Q. Are you in charge of the books there?

A. I am in charge, but I didn't make these figures. [288]

Q. Somebody under you—somebody that works under you make them?

A. Someone under my direction.

Q. Are the books in your care?

A. They are in my care.

(Testimony of F. C. Niederkrome.)

Q. Do you know that these are the actual records of the drawings?

A. They are the actual records of the drawings.

* * * * *

Q. Now, looking at the Exhibits that I mentioned—I will take these bill of sales, partnerships—which were 28, 29, 30 and 31, will you state the capital of the partners—of Mr. E. Royce, and of Mrs. Dora F. Royce? [289]

A. In reference to Exhibit number 28, this is a closing journal entry of the Yellow Cab Incorporated. This does not show the respective entries of the partners in the new partnership—it merely closes out the surplus account in the corporation.

Q. All right, what does the opening journal entry—(interrupted)

A. The opening journal entry—the opening journal entry reflects the assets and the liabilities as they were conveyed from the corporation to the partnership, and then goes on to reflect the partnership capital of each of the partners mentioned in the assumed business certificate or the bill of sale.

Q. All right, now, what interest is the interest of Mr. E. Royce there?

A. His interest is twenty-six point one five seven five percent.

Q. And Mrs. Dora F. Royce?

A. Dora F. Royce is twenty-three point oh six percent.

Q. Now, the figures which you have been reading, together with the interest of the other partners,

(Testimony of F. C. Niederkrome.)

can be found near the bottom of the second page of Exhibit number—(interrupted)

A. Second page of Exhibit number 29.

Q. Twenty-nine. Very well. Now, is there any way that you can identify from these liquidating entries of the corporation, that the same assets went into the partnership?

A. Yes, there is merely a—the mere difference is that in the corporation, the assets account were credited out and the liabilities [290] charged out, the same entry was taken and reversed on the partnership. The entries were closed out of the corporation through an entry called “Liquidating Account.” It was then immediately transferred into the partnership books.

Q. All right, now, the capital then, that was transferred over and was divided on the second page of Exhibit number 21?

A. Twenty-nine.

Q. Twenty-nine, in accordance with the partnership agreement?

A. Right.

Q. Very well. Now, let's talk of the drawings here for a minute. Give me anything you don't need—I will take them—as far as drawings are concerned. Now, then, in dollars and cents, what is the—what was the capital—did Mr. E. Royce and Mrs. Dora F. Royce invest in the Portland partnership?

A. Well, Mr. E. Royce—Royce's interest, was twenty-one thousand, two hundred and ninety-five dollars and twenty-three cents.

(Testimony of F. C. Niederkrome.)

Q. And Mrs. Royce's—Mrs. Dora F. Royce?

A. Mrs. Dora Royce was eighteen thousand, seven seventy-three fifty-one.

Q. Thank you. I will take that Exhibit. Now, you were speaking from Exhibit number 30 then. What page from 30 were you referring to?

A. I was referring to page one and page—page six. Page one and page six.

Q. Thank you. Now, you have what Exhibit in your hand? [291]

A. This is the original ledger sheet of the profit and loss account of E. Royce and Dora F. Royce in the Yellow Cab partnership of Portland.

Q. Does it show their distributions?

A. It does.

Q. Will you read into the record, the distributions to Mrs. Dora F. Royce, for the years '44 through '47?

A. The distribution in 1944, in April, fourteen thousand a hundred and eighty-seven dollars and seventy-five cents. In June, eleven thousand five hundred and thirty dollars—and—yes, eleven thousand five hundred and thirty. September, eleven thousand five hundred and thirty. December, eleven thousand five thirty. In 1945, the distribution was—in February, eleven thousand five thirty; in May, eleven thousand five thirty; in August, eleven thousand five thirty; in September, eleven thousand five thirty; in December, twenty-three thousand sixty dollars. Do you want 1946?

Q. '46 and '47.

(Testimony of F. C. Niederkrome.)

A. And '46, February, eleven thousand five hundred and thirty; May, eleven thousand five thirty; August, eleven thousand five thirty; October, eleven thousand five thirty. In 1947, September, four thousand six hundred and twelve dollars. 1948—(interrupted)

Q. No, we don't need '48. [292]

* * * * *

Direct Examination—(Continued)

Q. (By Mr. Jones): I am handing you a group of checks marked Petitioner's Exhibit 40, and ask you to look at them, and to state if you made them, and what they are? (Exhibit handed)

A. Well, these are checks drawn on the general fund of the Yellow Cab Company, made payable to Dora F. Royce, and they represent her withdrawals from the partnership.

Q. And I would like to have you—or have you check those checks off already against the exhibit that you were last mentioning when you read off her withdrawals? A. No, I haven't.

Q. May—that was Exhibit—(interrupted)

Mr. Picco: Thirty-one.

Q. Thirty-one. May we have it? I would like to have you state if those are the checks that represent the withdrawals shown on Exhibit 31?

A. (After comparing) Well, I will say they are—two checks [293] in April, one for twenty-six fifty-seven seventy-five, and one for eleven thousand five thirty, which make up this item of four-

(Testimony of F. C. Niederkrome.)

teen thousand a hundred and eighty-seven seventy-five.

The Court: Speak a little louder.

Q. Speak louder.

A. There are two checks in April, 1944, one for eleven thousand five thirty; one for two thousand six fifty-seven seventy-five, which make up the items of her April withdrawal, totalling fourteen thousand one eighty-seven seventy-five cents.

Q. Now, each time, say whether or not that checks with your exhibit there?

A. That checks with the Exhibit 31. In June, there was a check for eleven thousand five hundred and thirty dollars, which is the total withdrawal for June, and it checks with Exhibit 31. In September, there is a check for eleven thousand five hundred thirty dollars, which is the total withdrawal for September 1944, and it checks with Exhibit 31. December, there is a check for eleven thousand five thirty, and it checks with the total withdrawal for December 1944—checks with the Exhibit number 31. And February 1945, there is a check for eleven thousand five thirty, and that also checks with Exhibit number 31. In May 1945, a check for eleven thousand five thirty, which also checks with the amount shown on Exhibit 31; in August, a check for eleven thousand five thirty, which is the total amount drawn for August, 1945, and checks with the Exhibit number 31. [294]

The Court: Can't you shorten this?

(Testimony of F. C. Niederkrome.)

A. I beg your pardon?

The Court: Can't you shorten this? Can't you shorten this by checking them all and see if they all check?

Q. Just check them all and see if they all check?

A. September checks—(interrupted)

Q. Don't talk out loud. Just wait until you get the answer for the whole group.

A. There is one in December that does not check. A withdrawal of twenty-three thousand sixty dollars, and I only have a check for eleven thousand five thirty. February—and the rest of the checks check with the Exhibit.

Q. Now, this check that you said—(interrupted)

The Court: Where does that bring you up to?

A. To December of 1947.

Q. Now, then, the check that you said—one check was missing, for what month is that?

A. December—December 1945. The amount of the check is eleven thousand five thirty.

Q. Do you know whether or not the check was written? A. It was written.

Q. Was it written to Dora Royce?

A. It was.

Q. It is one that you can't locate?

A. Can't locate it—it has probably been misplaced by someone [295] in the office.

Mr. Jones: Well, we would like to offer those checks, Exhibit number 40, in evidence.

Mr. Picco: No objection.

(Testimony of F. C. Niederkrome.)

The Court: Exhibit 40 in evidence.

* * * * *

Q. (By Mr. Jones): Now, have you made an analysis, Mr.—this is still directed to the Seattle account, as far as Eunice and her trust is concerned—have you made an analysis of the trust, Mr. [296] Niederkrome?

A. Yes, I have made an analysis of the Seattle drawing account.

Q. Now, I am handing you—I am handing you here, a statement which will be marked for identification, 41.

The Clerk: Petitioner's Exhibit 41 for identification.

(Petitioner's Exhibit 41, witness Niederkrome, marked for identification.)

Mr. Jones: And would you please mark that also?

The Clerk: Petitioner's Exhibit 42 for identification.

(Petitioner's Exhibit 42, witness Niederkrome, marked for identification.)

Q. Now, 41, would you please explain what 41 is? (Exhibit handed)

A. Well, this is an analysis, or a check I made of Mr. E. Royce's trustee bank account at the United States National Bank, and I determined the deposits that are reflected in his passbook and checked them against the drawing account of the Yellow Cab Company of Seattle, and I found that

(Testimony of F. C. Niederkrome.)

he reflects in his passbooks, all the items that are shown in the drawing account of the Seattle Yellow Cab Company, for the account of E. Royce, trustee for Eunice M. Royce.

Q. May I see it a moment? (Exhibit handed) Now, I want then to show you—well, I will offer this in evidence first.

Mr. Picco: I have a few questions. Now, this is taken primarily from the passbook, is that right?

A. The information I have is from the passbook.

Mr. Picco: And it was compared against the—the withdrawals in the drawing accounts of the books in Seattle—Yellow Cab?

A. Yellow Cab Company.

Mr. Picco: That's fine. This is what you used? Exhibit 37?

A. That is correct.

Mr. Picco: No objection.

Q. All right, now, I am handing you—(interrupted)

The Court: You are offering that Exhibit are you? Are you offering that in evidence?

Mr. Jones: Yes, I did, your Honor.

The Court: Forty-one?

The Clerk: Forty-one.

Mr. Jones: Forty-one, yes, sir.

The Court: It will be received.

(Petitioner's Exhibit 41, witness Niederkrome, received in evidence.)

Q. Now, I am offering—I am handing you for

(Testimony of F. C. Niederkrome.)

identification, Petitioner's Exhibit 42, and ask if you prepared that? (Exhibit handed)

A. This is—I did prepare this.

Q. What is it?

A. It is a statement for—the tabulation of the checks issued by E. Royce, trustee, against the trustee account with the United States [298] National Bank.

Q. Does that show the missing checks?

A. It does.

Q. And the missing checks, I believe, are numbers six, eighteen, twenty, twenty-one, thirty-two and thirty-five, is that correct?

A. Well, I can't determine it from this list.

Q. Is missing—does your record there show that check number six is a First National—is a check to the First National Bank for sixty-thousand dollars?

A. It is a check to the First National Bank, as I determined the—as I found it to be made out from the stubs, in the check book.

Q. Yes. A. For sixty thousand dollars.

Q. And check eighteen, to J. W. Maloney, for ten thousand one ninety-seven eighteen?

A. Number eighteen, yes, right.

Q. And check twenty, to Eunice Royce for two hundred dollars? A. Two hundred dollars.

Q. And check twenty-one is what?

A. That's for J. W. Maloney, Collector, four thousand dollars.

Q. Check thirty-two?

(Testimony of F. C. Niederkrome.)

A. Is to Royce, Incorporated, for five thousand dollars.

Q. And check thirty-five?

A. That is to Eunice Royce, three hundred dollars. [299]

Q. Now, did Mr. Royce indicate to you which of those checks were loaned to him?

A. He indicated to me that these were loans. I don't know as I—(interrupted)

Q. Well, loans—(interrupted)

A. —specifically asked him whether they were to him or to someone else.

Q. That's these loans? A. Yes.

Q. Did you make a column showing the loans?

A. I did.

Q. Have you indicated on that column—in that column, such loans as haven't been repaid?

A. I have.

Q. May I see? What was the beginning balance in this account in 19—let's see, this is on a fiscal year, isn't it?

A. I didn't—I didn't determine the balances on this account.

Q. Do you know what the balance in the account in December 31st, 1949, was?

A. Well, the total deposits were two hundred and five thousand a hundred and fifty-four ninety-four. Checks issued were a hundred and eighty-six thousand, forty-six dollars and twenty-one cents, leaving a balance of nineteen thousand one hundred and eight dollars and seventy-three cents.

(Testimony of F. C. Niederkrome.)

Q. Would you repeat that last figure? [300]

A. Nineteen thousand one hundred and eight dollars and seventy-three cents.

Q. Thank you.

Mr. Picco: What period of time does this cover?

A. That is for the years '49 through—'44 through '49.

Mr. Picco: And where are the checks upon which this is based?

Mr. Jones: They are in evidence.

A. You have them in evidence.

Mr. Picco: Oh, those are in evidence?

A. Yes.

Mr. Picco: So you haven't—you haven't tried to describe what the loans were to. The checks will explain that as much as possible, is that right?

A. No, I don't try to—I haven't tried to describe who the loans were made to.

Mr. Picco: Those are the checks that I examined—(interrupted)

Mr. Jones: Mr.—those are the ones you examined Mr. Royce on.

Mr. Picco: —Mr. Royce on. No objection.

The Court: Are you offering it?

Mr. Jones: I am offering that in evidence, yes.

The Court: Exhibit 42 in evidence.

(Petitioner's Exhibit 42, witness Niederkrome, received in evidence.) [301]

Mr. Jones: Inasmuch as we are not identifying those, I would like to stipulate with you before the day is over, sometime, what my Seattle Exhibits are

(Testimony of F. C. Niederkrome.)

—we have pretty well identified them, and had them identified, Mr. Picco. I don't want any slip-up—on Exhibits 21—I will tell you the ones I want to identify here—are 20 and 21—may I see them? (Exhibits handed) Thank you. I would like to stipulate that Exhibit 20 is the journal—or pages from the journal—this is 20—pages from the journal of the Yellow Taxicab of Seattle, a partnership, setting forth the entries opening the books of the partnership, May 1st, 1944.

Mr. Picco: That has been received, hasn't it?

Mr. Jones: It has been received, but it has never been explained as to what it is.

Mr. Picco: I agree with that.

Mr. Jones: All right. Then I would like to also stipulate with you that Exhibit 21 consists of sheets from the general ledger of the partnership of the Seattle Yellow Taxicab Company, showing the partnership accounts of E. Royce, E. Royce, trustee of E. M. Royce, and Dora F. Royce, and the drawing accounts of each of the persons for the years 1945 through '53.

Mr. Picco: I agree to that.

Mr. Jones: Thank you. Now, in order to save time, I am not going to ask this witness to go through and analyze those accounts as I did for Portland, but we would do it in the same way. You may cross-examine this witness. [302]

Cross Examination

Q. (By Mr. Picco): Just generally, without

(Testimony of F. C. Niederkrome.)

going into the specific issues that you are here testifying about—you are related to Ezra Royce, aren't you? A. Yes.

Q. What is the relation?

A. He's my brother-in-law.

Q. Now, the Petitioner, Ezra Royce is the active member of the Hippodrome Amusement Company and the Yellow Cab Company of Portland, is he not?

A. Well, I believe his brother has always been quite active too. And I have taken some interest in the Hippodrome Amusement Company. I am a stockholder.

Q. Now, as far as the Petitioner Barney Royce is concerned, he has been rather inactive for years, hasn't he?

A. Well, he comes up here three or four times a year. He usually discusses with me quite a number of things.

Q. Hasn't he been living in California for the last—(interrupted)

A. That's right; living in California.

Q. How long has that been going on?

A. Well, his home, until recently, has been in Vancouver, Washington. He had just taken—he sold his home in Vancouver last summer, and I would say that he is probably making his permanent residence in California now. [303]

Q. But prior to that time he was in California on account of health reasons? During the years in question here?

(Testimony of F. C. Niederkrome.)

A. He originally went there because of his wife's health.

Q. Now, would you say—is it a fair statement to say that Ezra Royce is the dominant personality of the group? A. He's the most active, yes.

Q. And he has the controlling stock interest in these ventures? A. In the what ventures?

Q. The Hippodrome?

A. He does in the Hippodrome, yes.

Q. And Yellow Cab?

A. He doesn't control the Yellow Cab Company.

Q. You take your instructions and orders from the Petitioner, Ezra Royce, don't you?

A. Quite often; sometimes from B. Royce.

Q. You work under Ezra Royce?

A. Yes. To a considerable extent, at least.

Q. Now, going to Hippodrome Amusement Company. Steps were being taken to remodel the building, or to construct a new one in 1945, isn't that correct?

A. No, I *don't* there were any steps to remodel the building in '45.

Q. When were steps taken?

A. There was no remodeling done until just three or four years ago. [304]

Q. When did these plans come into conception?

A. With reference to the post office?

Q. No, with reference to remodeling the building or constructing a new building?

A. Well, that was during—that is during, I

(Testimony of F. C. Niederkrome.)

think, probably '48, '49—I am not certain as to the date on the—with reference to the Oregon Motor Stages—(interrupted)

Q. That's right. I mean, weren't you thinking about those things in 1945 and 1946?

A. I don't think they had developed at that stage—'45.

Q. You were thinking of using—of constructing a building so that Oregon Motor Stages could use it?

A. I am not sure that that was in '45.

Q. Well, do you know what year it was?

A. I did—it was a later year.

Q. Was it '47?

A. It could possibly be, yes.

Q. Now, wasn't there a need then for that money?

A. It didn't get into any final stages of construction on it. In fact, there was never any agreement entered into to construct the building.

Q. Did you tell me—didn't you tell—didn't you say on direct examination that improvements were made several years ago?

A. Several years ago.

Q. Now, at that time, wasn't there a need for the money? [305]

A. Didn't require—we had enough money to do it. Didn't require any extra funds.

Q. What sort of improvements were those?

A. Oh, we installed a new furnace; installed a kitchen for the purpose of using the facilities for conventions, and we installed a new entrance.

(Testimony of F. C. Niederkrome.)

Q. Now, were there any records of minutes authorizing the payment of twenty thousand dollars to Ezra Royce?

A. No, it was an informal agreement.

Q. Ezra Royce just requested the money, is that it?

A. Yes.

Q. His requests were normally complied with, as a matter of course, were they not?

A. Yes; so were mine. And so were B. Royce's.

Q. Wasn't that a rather unusual situation, you can just use the corporation when you wanted to, is that it? Is that what you are trying to tell the Court?

A. That isn't the situation exactly. He has been—both he and B. Royce have, at times, come—come to the rescue of the corporation in those years, when the corporation was going through lean profits, and had a deficit for about ten years, and they advanced the corporation money, to help it out. And I, as a minority stockholder, did not feel that it was unreasonable to help—or to accommodate them—to accommodate Mr. E. Royce with twenty thousand dollars, as long as the corporation was not needing the funds. [306]

Q. When did this happen—that the corporation was in need of funds?

A. It—there were a good many years prior to '45. I think my surplus account will show that we carried a deficit there for probably ten years. And during that period, both E. Royce and B. Royce

(Testimony of F. C. Niederkrome.)

came forth with advances to carry the corporation through this situation.

Q. That was in the earlier years? A. Yes.

Q. In the thirties?

A. And when the situation was reversed, I was not opposed to making an accommodation.

Q. Now, you mentioned that changing of the account receivable to a note receivable—that was in 1954, was it?

A. Yes, I did that in March—after the closing of the books on March 31. I did that on my own volition. I didn't discuss this with anybody. I had no reason to do it, other than we were thinking of—we were discussing—a negotiation with the Post Office Department, and it would then be necessary to have the funds. And the matter came to my attention, and I merely attempted to—to set the accounts up and segregate them, so the items would not be co-mingled. I did not ask Mr. Royce at that time to sign a note, and insofar as the negotiations fell through, there has nothing been done about it.

Mr. Jones: Mr. Niederkrome, I don't think that the Judge [307] can possibly hear you unless you speak up.

Q. Actually, there was no reason for changing the account at all, was there?

A. There wasn't.

Q. If you people wanted to repay, you could have done it without putting a note into the thing, at that time, as late as 1954, is that right?

(Testimony of F. C. Niederkrome.)

A. We can instate a note there any time, I presume.

Q. Your reason, would you say that it was a personal reason for changing that account?

A. I did it on my own initiative.

Q. Did you do it because of this examination in the income tax liability of Mr. Royce and the other Petitioners?

A. No, sir, as a matter of fact, there has only been about two months that I knew that this was in issue, and the deficiency assessment against him. I did not know this before. I have never seen his deficiency notice. I didn't know what the assessments were, or what the deficiencies——(unfinished answer)

Q. You didn't know anything about it until just recently?

A. About two months ago.

Q. Now, that four hundred dollars that you speak of, when was that borrowed?

A. That was in '48.

Q. Did you pay any interest on that?

A. I haven't yet. [308]

Q. And that hasn't been paid, either?

A. No. [309]

* * * * *

Q. (By Mr. Picco): I give you Petitioner's Exhibit number 42, and will you tell me when this payment was made down here—what is the amount?

A. This item—three items, were paid at one time in 1950.

Q. They were paid in 1950?

(Testimony of F. C. Niederkrome.)

A. I believe they were paid in 19——(interrupted)

Q. Do you know that as a fact, or later than 1950?

A. If my memory serves me right, they were paid in 1950.

Q. There were just three items that were repaid, is that correct? A. Yes. [310]

Q. There was five thousand dollars; one thousand; and eleven hundred?

A. Yes, all to——(interrupted)

Q. Royce, Incorporated?

A. Royce, Incorporated, and they have been repaid.

Q. Those were the only items that were repaid?

A. That's right.

Q. If you please, to get back to the Hippodrome Amusement issue just for one minute. Now, you mentioned the minutes—1954 minutes—April 19, 1954—and at this time, the company—the Hippodrome Company, was actually interested in constructing a building, is that correct?

A. That's right.

Q. Now, was there a payment on that account receivable at that time? A. No.

Q. Was there—did you ever ask for repayment at that time? A. No.

Q. Of the twenty-thousand-dollar loan?

A. No.

Q. Was it contemplated—was repayment of the loan contemplated at that time?

(Testimony of F. C. Niederkrome.)

A. It was; it was discussed at that time, because it would be necessary to have far in excess of twenty thousand dollars to construct this building. [311]

Q. That is——(interrupted)

A. It would not only be necessary to collect this money from E. Royce, but also to perhaps arrange for financing of some amount, pending on what the building would cost. I am sure that it would cost thirty thousand dollars at the minimum.

Mr. Jones: Mr. Niederkrome, let me remind you again: It would help the Judge a great deal if he can hear the story here as well as read it.

Q. Now, actually, there is no mention of that in the minutes here, which talk about the financing of that? A. There isn't, no.

Q. I hope I don't take too long with this, it has been read into the record, but at the time, it was read rather fastly, and I would like to have a repeat on it; and that is—will you just describe just what the earned surplus account was for Hippodrome, on December 28, 1945. And do what you did before, just a repeat on it?

A. Well, as I explained before, this corporation is on a fiscal year basis, and the earned surplus on March 31, 1944—'45—1945, was sixteen thousand five seventy-six thirty-four.

Q. Now, what date was that?

A. On March 31, 1945.

Q. Yes.

A. Now, then, twelve months later, they had

(Testimony of F. C. Niederkrome.)

earned five thousand one hundred twenty-seven dollars and six cents, and the operation for twelve months, and the earned surplus at March 31, '46, was twenty-one [312] thousand, seven hundred three dollars and forty cents.

Q. And what date was that?

A. March 31, 1946.

Q. And the profit earned during that fiscal year was how much?

A. Five thousand one hundred twenty-seven dollars and six cents.

Q. Thank you.

* * * * *

Redirect Examination

Q. (By Mr. Jones): Until the project had been closed with the Post Office or with Greyhound Motor Stages—Pacific Greyhound, or with old Oregon Motor Stages, you didn't have any need for the money, did you?

A. There was—there was no need to have a repayment made. The matter of paying was discussed at the time this negotiation came up with the Post Office Department, but there was no need for actual repayment of any part of it.

Q. Yes, but what I mean, it was to be repaid then, if the project went through?

A. Had the Post Office Department approved our lease, it would have been necessary. [313]

Q. And it would have been—it would have been paid then? A. Yes.

Mr. Jones: That's all.

(Testimony of F. C. Niederkrome.)

Mr. Picco: One other question.

Recross Examination

Q. (By Mr. Picco): At the time that this money was turned over to Ezra Royce in December 28 of 1945, did you consider the possibility of declaring a dividend to that extent?

A. No, we never did.

Mr. Picco: That's all.

The Court: You're excused.

A. The company did not have the necessary points to declare a dividend at that time.

* * * * *

DORA F. ROYCE

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Dora F. Royce, 410 Southwest Edgecliff Road. [314]

Direct Examination

Q. (By Mr. Jones): Mrs. Royce, how long have you been a resident of Portland?

A. Since 1920.

Q. How long have you been married to Mr. E. Royce? A. 1923.

Q. Mrs. Royce, prior to your marriage, what was your occupation? A. I was a milliner.

Q. Where did you work?

A. Various places. Salem, Tacoma, Seattle.

(Testimony of Dora F. Royce.)

Q. In what capacity in the milliner business did you devote your—to what activity did you devote yourself?

A. Well, I was a designer, and I——(interrupted)

Q. Did you ever have charge of a millinery department?

A. Well, I did, yes. I had——(interrupted)

Q. Where was that?

A. Well, that was in Toppenish, Washington; Lewiston, Idaho; I also did the buying for—for those shops.

Q. Did you have any kind of experience that made you have to look out for and be responsible for the expenses and overhead of a business?

A. Yes, I did.

Q. Where was that?

A. Well, that was in Lewiston, Idaho.

Q. And what——(interrupted)

A. And also in Tacoma, Washington.

Q. And what about your work in Seattle? [315]

A. Well, I was with McDougall and Southwick there, yes.

Q. Did you have a designing position there?

A. I did, yes.

Q. Did that put other people under your supervision? A. It did, yes.

Q. And then did you work in Portland for a while? A. Yes, for a short time.

Q. Now, were shares of stock given to you in 1942, in the corporation that preceded the present

(Testimony of Dora F. Royce.)

Yellow Taxicab partnership? A. That's right.

Q. I would like to show you, a certificate—number—Exhibit number 23. I am going to direct the examination first to Portland, your Honor. I am handing you here the Petitioner's Exhibit number 23, and ask you if that represents the shares that were given to you? (Exhibit handed.)

A. Yes, it does.

Q. And this is for fourteen hundred shares of the common stock of the Yellow Cab, Incorporated, the corporation. Now, when that was given to you, was that given to you outright? A. It was.

Q. As your own stock? A. It was.

Q. No strings attached to it? A. No.

Q. After that was given to you, and came into your possession, [316] was a partnership of the old stockholders formed? A. That's right.

Q. The corporation was liquidated out of the picture, and the old stockholders became partners?

A. That's right.

Q. In a partnership. Have you been a partner in that since? A. That's right.

Q. Do you regard yourself in every sense of the word as a full partner? A. I certainly do.

Q. And do you do any work for that partnership? A. Yes, I do.

Q. And particularly between the years 1944 and 1947, what were your duties?

A. Well, it was to check the cabs, as to the—and the drivers as to their uniforms, whether they were carrying out the orders that they were sup-

(Testimony of Dora F. Royce.)

posed to. I would check them at the various hotels, depots, or any place where I would happen to see a cab, I would check the time of day, and whether they had passengers in their cabs or not, and whatever I thought wasn't being done right, that, I would write down and send into the office.

Q. And how much time did you devote to doing work of this kind during the years '44 through '47?

A. Well, there were times I was down every-day, and then, of course, there might be different times, maybe I didn't go down for [317] three or four days.

Q. And how much, percentagewise, or however you can make the best estimate, how much of your full day would you figure that on the average, month after month, you would put into this kind of work? A. On the average for the month?

Q. Well, I don't know that you can just take one month, but over a period of time, what portion of your time did you feel is devoted to this? Take an eight-hour day. How much of an eight-hour day did you figure that you devoted?

A. Well, I don't know as I could figure that, because some days I might be downtown all day, and then maybe three or four days, or maybe a week would go by, and I wouldn't be down more than one or two hours.

Q. But you were constantly at it?

A. Oh, yes.

Q. Now, did you receive drawings from this company? A. I did.

(Testimony of Dora F. Royce.)

Q. What did you do with the money you received? A. Well, I put it in my account.

Q. And what did you do with the money though—how did you dispose of it, if you did dispose of it? A. I don't know as I——(interrupted)

Q. What did you buy?

A. Oh, what did I use the money for?

Q. Yes. [318] A. Well, various things.

Q. Well, tell us some?

A. Well, I bought, first things, some cars.

Q. What kind of cars?

A. Well, New Yorker, Chrysler, Cadillac.

Q. How many New Yorkers? A. Two.

Q. How much did they cost?

A. Well, I don't remember the price of those. It probably was in the neighborhood of four thousand, I don't——(interrupted)

Q. All right. Now, what else did you buy?

A. Well, I bought Sterling.

Q. What did you pay for the Sterling?

A. Well, it was probably close to eighteen hundred dollars.

Q. And what else did you buy?

A. Well, one thing was an Exercycle, and I bought a lace cloth, and——(interrupted)

Q. What did this exerciser cost?

A. Three hundred and twenty-five, or three fifty.

Q. What did this lace cloth that you just mentioned——(interrupted)

(Testimony of Dora F. Royce.)

A. Well, it was in the neighborhood of four hundred dollars.

Q. All right, what else did you buy?

A. Well, I bought Government bonds.

Q. How much worth? [319]

A. I think probably around seven thousand dollars' worth.

Q. What else did you buy?

A. Just trying to think—stocks—I don't know as I can think of anything right now.

Q. Any railroad securities?

A. Well, yes, that was Missouri-Pacific.

Q. Can you remember how much?

A. Well, in the neighborhood of twenty-five hundred dollars, I believe that was.

Q. And did you have any improvements made at your own expense at your home?

A. Yes, I did.

Q. Who drew the plans for them?

A. I drew a rough sketch of it, and then submitted it to the architect.

Q. You designed this personally?

A. Yes, I did.

Q. All right, what was the cost of that work?

A. Well, that was between fifteen and eighteen thousand dollars.

Q. Did you buy any other furniture that is out of the ordinary?

A. Well, yes, oh, yes. There were quite a number of things that I got. I don't know as I can enumerate them right now.

(Testimony of Dora F. Royce.)

Q. Did you buy a fur coat?

A. Yes, I bought fur coats.

Q. What did you pay for them? [320]

A. Well, one was a thousand dollars; I believe the other one was eight fifty.

Q. A thousand and eight fifty? A. Yes.

Q. Two of them? A. That's right.

Q. Out of your own earnings, did you pay your own income taxes? A. That's right.

Q. Now, who provided for the ordinary household expenses, such as groceries, and heat and lights and water, and things like that?

A. Oh, Mr. Royce.

Q. You didn't spend your money for that?

A. No; no.

Q. Now, there are some documents in evidence here. I want to particularly look at this waiver—notice—minutes—it is 25. I should like to see 25 and 26, please? Twenty-four, 25 and 26, I should like to see. (Exhibits handed.) Do you recognize your signature—photograph of your signature on this photostat, Exhibit number 24?

A. Yes, I do.

Q. You signed that, and were at the meeting, were you, where this was dissolved?

A. That's correct, yes.

Q. Now, I am handing you Exhibit number 25, and ask you to look at the signatures on that. (Exhibit handed.) Your signature on this [321] Exhibit? A. That's right.

Q. This is the partnership agreement?

(Testimony of Dora F. Royce.)

A. That's right.

Q. And under this partnership agreement, you have, at all times, been a partner since it was—
(interrupted) A. That's right.

Q. —made? I want to also show you Exhibit 27. The original of this certificate—assumed business name certificate—does that bear your signature? A. Yes, it does.

Q. And you signed it, you remember that?

A. That's right.

Q. And you have always—and all the other partners have held you out to the public as one of the partners? A. That's right.

Q. Now, was there any kind of a condition attached, or any strings attached to this gift of stock to you? A. No, there was not.

Q. When you went into that partnership, you intended to go in there as a real and true partner, and to do your portion and share?

A. That's correct.

Q. Now, Mrs. Royce, how long do you keep your records?

A. Well, not any further back than six years. That is what I have always been in the habit of doing. [322]

Q. How much? A. Six years.

Q. Six years. Since you met me, I have told you to keep them longer than that, haven't I?

A. That's right.

Q. Well, now, I am going to hand you here, Exhibit 22.

(Testimony of Dora F. Royce.)

The Clerk: You have it.

Q. Well, Mr. Royce has it. Where did you keep your personal bank account, Mrs. Royce?

A. The Sixth Street Branch, First National Bank.

Q. Now, for the years 1944 through 1947, do you have either your cancelled checks or bank statements?

A. No, I do not.

Q. I am handing you—first, I want to ask you, Mr. Picco, I had the bank photostat these things. Do you wish me to call a banker to identify them?

Mr. Picco: Do you know that these are all of the deposits and bank statements?

Mr. Jones: I will ask her.

Q. (By Mr. Jones): You kept your bank account at the Sixth and Morrison Branch of the First National?

A. That's correct.

Q. And were you—did you draw on that account at any time for whatever you wanted?

A. Oh, yes. [323]

Q. No one influenced you in what you spent the money for, or how you spent it?

A. No.

Mr. Picco: That will be all right. We will stipulate to that so you won't have to bring anyone in.

Mr. Jones: I offer Exhibit 22 in evidence.

The Court: It will be received.

(Petitioner's Exhibit 22, witness D. Royce, received in evidence.)

Q. Now, when these distributions of the partnership were made, did they come to you?

A. Yes.

(Testimony of Dora F. Royce.)

Q. And you did with them as you pleased?

A. That's right.

Q. Now, in your—in your home, did you have—or in your home, in the office, or anybody else's home, Mr. B. Royce's home, or anywhere, did you have business conferences with the partners concerning the affairs of Yellow Cab? A. Yes.

Q. Did you take part? A. That's right, yes.

Q. Take part in the discussions?

A. That's right.

Q. Did you attempt to keep yourself informed of the affairs of the corporation, so that you could contribute? [324] A. That's right, yes.

Q. Now, I am going to mix in—no, I will keep Seattle out of it. Now then, in the uniform—in the uniform checking that you did, did you watch that as well as the other things—the uniform of the drivers? A. Oh, yes.

Q. Now, what was this issue that came up over whether there would be women drivers?

A. Well, I wasn't in favor of women drivers.

Q. You were what?

A. I was not in favor of the women drivers.

Q. You got out-voted on that one? A. Yes.

Q. And then, besides policing uniforms generally—they were added to your supervision?

A. Yes.

Q. Did you have a joint checking account with your husband? A. No.

Q. Now, I am going to the Seattle Yellow Cab Company, and for a moment, before I talk about

(Testimony of Dora F. Royce.)

your interest in it, I am going to talk about this trust. Were you present at any time, at any place, where your daughter Eunice was first informed of the trust? A. Yes, I was.

Q. Where was that?

A. Well, it was in our home. [325]

Q. In what room? A. In the kitchen.

Q. And how old was she then?

A. I believe eighteen.

Q. And when did she graduate from high school? When was she graduated from high school? A. '51, I believe that was.

Q. What's that? A. Oh, from high school?

Q. High school?

A. I don't know as I can give you—I don't remember the year.

Q. Do you know how old she was?

A. Seventeen or eighteen.

Q. All right. And then where did she go?

A. After high school?

Q. Yes. A. What school?

Q. Yes. A. University of Oregon.

Q. And she was there from when to when?

A. Well, she was there until '51.

Q. All right. Now then, during the time that she was in college, do you know anything about what took place between Mr. Royce, Mr. E. Royce, as trustee of her trust fund, with respect to putting money [326] into her private bank account?

A. Well, I know that he put money in to her bank account, yes.

(Testimony of Dora F. Royce.)

Q. But you don't know the details of——(interrupted) A. No, I don't.

Q. All right. Do you know whether she had a private bank account of her own?

A. Yes, she did.

Q. Where did she keep it?

A. The Sixth Street Branch of the First National Bank.

Q. And that is a smaller account in her own name? A. Yes.

Q. In which funds were deposited from time to time? A. That's right.

Q. Now, then, coming back to this Seattle partnership, as far as you were concerned, I would like to see certificates—Exhibits 14 and 16—14 and 16 and 17 and 18, 19 and 19.

The Clerk: Eighteen, 19 and what?

Mr. Jones: That's all. Thank you very much. (Exhibits handed.)

Q. Now, did Mr. Royce give you any stock in Yellow Cab Company of Seattle, a Washington corporation? A. He did.

Q. And I am going to hand you here this Exhibit number 14, which is a photostat of several shares—I am turning to the last share in it, and ask you if you recognize that as a photostat of any [327] certificate you have seen before?

A. Yes.

Q. Of your shares? A. Yes.

(Testimony of Dora F. Royce.)

Q. And now, when this was given to you, were there any conditions of any kind attached to it?

A. No, there were not.

Q. It was given outright? A. That's right.

Q. As your own? A. That's right.

Q. To do with as you pleased?

A. That's right.

Q. Now, after that gift was made, Mrs. Royce, did you make and file a donee's gift tax return?

A. Yes.

Q. And I am handing you Exhibit number 16, and ask you if it bears your signature?

A. It does.

Q. Do you know when that gift was made to you? A. That was in 1944.

Q. What month?

A. I believe it was January.

Q. Now, then, there is a certificate of stock—the certificate of stock that you looked at, bears a date of April the 20th, 1944, do [328] you know why there is any difference—or lapse of time between the January shown on the gift tax return and the date on the stock certificate?

A. Do I know why that—(interrupted)

Q. Do you know how it happened—to be that lapse of time? A. No; no, I don't. No.

Q. And whenever you speak, always feel you are addressing the Court. Not me. Now, were you at Seattle when the old corporation was dissolved and the partnership was organized? A. Yes.

Q. And I am going to hand you here—there

(Testimony of Dora F. Royce.)

must be a stock tender in here. Number 17, I don't see it. Oh, yes. Here is a tender of shares for liquidation. Does this bear your signature?

A. Yes, it does.

Q. Thank you. And this all was done at the meeting in Seattle, at the liquidation? A. Yes.

Q. And then here is an Exhibit 18, and I refer you to the last page, and ask you if your signature is on 18? A. Yes, it is.

Q. All right, when you signed that, did you go into this business with the intention of being a full and bona fide partner? A. I did.

Q. Has that been your intention all the time?

A. That's right. [329]

Q. Were there any agreements or understandings of any kind between you and Mr. Royce, that you weren't a bona fide partner, either in Portland or Seattle partnerships?

A. Would you state that again?

Q. Yes. Was there ever at any time, an understanding between you that you wouldn't be such a partner? A. No; no.

Q. And you are such a partner?

A. That's right.

Q. Now, have you ever held conferences with respect to the business affairs of the Seattle company?

A. I have gone up there on numerous trips, and talked with Mr. Wenck in his office, yes.

Q. About the company's affairs? A. Yes.

Q. Have you ever performed any services in

(Testimony of Dora F. Royce.)

Seattle, similar to those you performed in Portland? A. Similar but not to the extent.

Q. But you had performed some?

A. In Seattle.

Q. Mr. Wenck is the Manager there?

A. That's right.

Q. And does your husband go up and devote the time there that he does here?

A. Devote the time that he does here? [330]

Q. Yes. A. No.

Q. Now, these things that you have purchased out of your own funds, did the money come all from one partnership, or from both, or what?

A. From both.

Q. And did you have the same control over the disposition of your Seattle drawings as from the Portland drawings? A. Yes.

Q. Did you go into each of these partnerships of your own free will? A. I did.

Q. Now, as far as that trust to Eunice is concerned, is that a—was that a bona fide out and out gift to her only? A. Yes, it was.

Q. And a bona fide existing trust, where your husband has no interest in it? A. That's right.

Q. It's her money and her interest?

A. It is to be hers.

Q. Now, then, did Mr. Royce ever invest any of your funds for you? A. Yes.

Q. Was that with your —was that with your authority? A. Oh, absolutely. [331]

Q. Did you talk the things over first?

(Testimony of Dora F. Royce.)

A. Yes.

Q. Now, have you ever been to the Aldergold Copper Mines? A. Many times.

Q. And were any of your funds invested there?

A. Yes.

Q. Was that with your consent? A. Yes.

Q. Was that talked over with you before you did it? A. That's right.

Q. And was that at your direction and desire?

A. It was my wish, yes.

Mr. Jones: You may cross-examine.

Cross Examination

Q. (By Mr. Picco): Mrs. Royce, do you consider the services that you rendered the Yellow Cab Company of Portland as being material—significant?

A. Well, I do, because services is what we give, and if the services are good, why, it would make quite a difference in our operation.

Q. In comparing your services with the nature of the services which Mr. Royce rendered, how would you do it? His services are considerably more vital to the operation of the business, was it?

A. Well, it probably was more so, but then, I feel that my services are very important to the company too. [332]

Q. Then did your services require your walking up and walking down the street, primarily, and walking—watching out for Yellow Cabs?

A. Not walking up and down. Generally, it

(Testimony of Dora F. Royce.)

would be at the hotels, or the depot, or any place where cabs came in frequently, picked up loads, or discharged passengers.

Q. These services weren't rendered around the shop or office at all? A. No; no.

Q. Actually, the services could very well have been rendered while you were making a tour downtown, buying a fur coat, or something like that, is that right? A. Not necessarily.

Q. It could have been done during that period of time?

A. Well—it—no, but I devoted a lot more time than that.

Q. Now, in—you say that you attended the conferences. Will you go into that just a little more explicitly? What conferences are you referring to? A. You mean——(interrupted)

Q. We are talking about Yellow Cab?

A. In Portland?

Q. Portland.

A. You mean the conferences that we had, among the four of us? It was generally in our home, when the four of us got together, yes. [333]

Q. Usually after the evening meal, or something like that?

A. Not necessarily. We planned to get together for that reason.

Mr. Jones: Speak a little louder, please, Mrs. Royce.

Q. I take it you are referring to conferences with your husband? A. No.

(Testimony of Dora F. Royce.)

Q. You mean that the conferences of the Yellow Cab Company, Portland, were held in your home?

A. With the four—yes, four of us would very often get together and discuss the business.

Q. Would you give the Court an illustration of some of the decisions that were made at these conferences?

A. I don't know as I remember them offhand.

Mr. Jones: Wait just a minute. All right.

A. I don't know as I remember them offhand, just what took place.

Mr. Jones: Mrs. Royce, I can't hear you.

Q. Would you just state that again, so the Judge can hear you?

The Court: Somebody close those windows back there.

Q. You understood my question, did you not? I asked you to give the Court an illustration of some of the conferences that were held and some of the decisions that were made at those conferences at your home?

A. You just an illustration of what I—I don't know as I can remember what those were at this time.

Q. Now, you mentioned that you had two New Yorkers, what are [334] those, are those—what model automobile is that? Is that a Chrysler?

A. Chrysler, I guess.

Q. Do you remember when you had those?

A. I don't remember the exact years, no.

(Testimony of Dora F. Royce.)

Q. You don't know whether you got them during the years——(interrupted)

A. It was during around '45, '44.

Q. How about, you mentioned you had a Cadillac, too? A. Yes.

Q. Are you talking about the family car?

A. No, that's my own car.

Q. That's separate, and owned——(interrupted)

A. Yes.

Q. ——separately by you? Or is it a joint account—or joint title. How was title taken of these automobiles?

A. I don't remember. Some of them were in my title, and I think maybe some were Mr. Royce's—they were definitely my cars.

Q. As a matter of fact, they might have been jointly held by you and Mr. Royce?

A. Well, they were definitely my cars.

Q. Well, you said you had some stocks and bonds? A. That's right.

Q. Did you have very many? [335]

A. Well, I had the Missouri-Pacific, and then I had——(interrupted)

Q. And do you know how many shares you held of those stocks, or——(interrupted)

A. I don't remember the number of shares, no.

Q. In fact, did you have any after 1946—or did you have them before—when did you own the securities?

A. I thought it was around '44 or '45—I don't remember the exact years.

(Testimony of Dora F. Royce.)

Q. Do you know whether you had them after 1945? A. I think it was 1946.

Q. And did you get rid of them right away?

A. Right away? No.

Q. Did you have them in '47 and '48?

A. I wouldn't be able to say, unless I had something to check by.

Q. You are not sure whether you had the securities, or any securities at all during the tax years?

A. Yes, I did; yes, I did.

Q. If you did, you would have reported interest or dividends on those, would you not? A. Yes.

Q. And if you hadn't reported the dividends or interest on those returns—on the returns, then you would conclude from that, wouldn't you, that you didn't have them?

A. At that particular time? [336]

Q. Yes.

A. Well, of course, as I say, I don't remember just the exact years.

Mr. Picco: Will you give me Petitioner's Exhibit 40? (Exhibit handed.)

Q. Now, I hand you Petitioner's Exhibit 40, which comprise a number of checks paid by Yellow Cab, endorsed by E. Royce to yourself, payable Dora F. Royce. Do you know about these checks? A. Yes.

Q. Now, these are the checks that went—part of the checks or all of the checks that went into your separate bank account?

A. I don't—they all went in there.

(Testimony of Dora F. Royce.)

Q. You are not sure they did, are you? Did you say yes or no to that question?

A. I don't know just where—whether I deposited them in my account, or whether I cashed them.

Q. Would you know by looking at the—at the reverse side of the check, whether you cashed them, or whether you put them into the bank account?

A. Whether I cashed them or put them in the——(interrupted)

Q. Bank account?

A. Well, probably I would.

Q. You want to look at those? Isn't it true that you endorsed a good many of those checks—principal number over to your husband? [337]

A. No, I—only where it was—where I was reimbursing him for something that he had paid out for me.

Q. Oh, I see.

The Court: Would you repeat that statement, please?

Q. Will you repeat that statement?

A. Reimburse him for something that he had paid out for me.

Q. Now, here is a check dated 8/25/1945—it is number seventeen eight fifty-five, and that is made out to you, in the sum of eleven thousand five hundred and thirty dollars. Now, you endorsed this over in blank to your husband, Mr. Royce. Was that a reimbursement?

(Testimony of Dora F. Royce.)

A. It could have been, or it might have been a—a deposit I made for—in my safety box.

Q. You were putting money in your safety deposit box? A. Yes.

Q. When would you do that?

A. When would I do it? When I cashed the check.

Q. You mean, you didn't leave the money in the checking—in the savings account? You would take the money out of the savings account to put in your safe deposit box, is that what you mean?

A. No, it wasn't in the savings account.

Q. Well, this—what would you do with it then? This is your check. Please explain it to the Court in your own way?

A. Well, of course, I don't remember the particular check.

Q. Well, it is a check like it—it gives you an idea what you [338] did with it, isn't that right?

A. Well, I cashed it and placed the money in the—in my—in the safe.

Q. Well, this check, Mrs. Royce, was turned over to Mr. Royce?

A. Well, I think probably that oftentimes, they required his signature too, to get the cash at the bank.

Q. I see. Here is another one—August 4, 1945, number eighteen one forty-three, and did you do the same with that?

A. Yes, a good many—number of them.

The Court: You will have to speak louder.

(Testimony of Dora F. Royce.)

A. There was a good number of them.

The Court: Keep your face turned to the front.

Q. This was eleven thousand five hundred and thirty dollars? You did the same thing with that check, so far as you know?

A. Yes, as far as I know; yes.

Q. And the next check, September 14, 1945, in the same amount, eleven thousand five hundred and thirty dollars? You think that went into the safe deposit box? A. I think so.

Q. Here's December 28, 1945—the same type of a check, and it's number eighteen seven nine three, again, eleven thousand five hundred and thirty. You think that is the explanation for it?

A. I—yes.

Q. And all of these that were endorsed over in blank to Mr. [339] Royce found their way into the safe deposit box? A. That's right.

Q. Now, here is one for four thousand six hundred and twelve dollars, September 7—15, 1945, would you say the same as to that? It's endorsed in blank——(interrupted)

A. Yes, I imagine that is what it was.

Q. Now, all of these checks that were endorsed in blank to Mr. Ezra Royce, you think got into the safe deposit box? A. Yes.

Q. You didn't put them in your savings account? A. No.

The Court: Do you have any recollection of how much total amount you had——(interrupted)

A. No, I don't. I don't remember that.

(Testimony of Dora F. Royce.)

The Court: Just a moment. The total amount you had in your safety deposit box at any one time?

A. Well, it was a considerable amount.

The Court: That is an indefinite term.

A. Well, around sixty-five thousand, something like that.

Q. You are saying now that you had sixty-five thousand dollars in case in a safe deposit box?

A. Around that. I don't remember the exact——(unfinished answer)

Q. Is that different from what you stated on direct examination? I had the impression, from listening to you that you had it in a [340] savings account, or that it was invested, or loaned to Mr. Royce?

A. That I had it in a savings account?

Q. Either that, or paid for taxes, or invested in notes of your husband, or in that gold mine?

A. A great deal of it I turned over to him for investment, yes.

Q. You mean from the safe deposit box?

A. Yes.

Q. What did you say on that—what was the amount of that?

A. I don't remember the amount of that.

Q. Now, on those checks that were endorsed in blank to your husband, was it necessary to have him put that in a safe deposit box and then remove it from the safe deposit box? A. Yes.

(Testimony of Dora F. Royce.)

Q. Now, you say you know quite a bit about the Aldergold Copper Mine?

A. Yes, I have been up there a good many times.

Q. Where is it?

A. It's up at Twisp, Washington.

Q. Do you know anything about the operation of the mine, if any?

Mr. Jones: Louder, Mrs. Royce, or the Judge won't hear it.

A. About the operation? You mean whether it has been in operation? Yes. And I have——
(interrupted) [341]

* * * * *

A. What was your question?

Q. I asked you whether you knew anything about the operation of the mine?

A. Well, I know that it was operating.

Q. That's the—the information you know about the mine is what you got from your husband, isn't it?

A. Not necessarily. I heard the different ones discuss the operation of the mine, and I have——
(interrupted)

Q. And it—I'm sorry.

A. I was very interested in the mill—I went all through the mill, and it was huge.

Q. Your husband was very much interested in that company, wasn't he?

A. I don't know—I don't know as I understand your question.

Q. Was he interested in that company?

(Testimony of Dora F. Royce.)

A. Yes, he was interested.

Q. He promoted the sale of stock in that company, didn't he? A. I don't know about that.

Q. Do you know about his activity in connection with the mine, [342] or with that company, the Aldergold Copper Company?

A. His connections?

Q. His connection or his activity concerning that company? A. No, I don't know that.

Q. Isn't it true that the principal part of that money went into ventures that your husband was interested in?

A. It went into—it—I was very much interested to put money into the mine, and authorized him to put my money into it.

Q. Now, you loaned the money to your husband to put into the mine, did you not?

A. That's right.

Q. Did he give you a note for that?

A. No, I haven't a note for it.

Q. It wasn't necessary to have notes between you and your husband, I take it? I mean, as husband and wife, you had confidence in each other, is that right?

A. I certainly did have confidence in him.

Q. If he asked you for any money, why, you were glad to give it to him?

A. On a loan, you mean?

Q. Yes. A. Yes.

Q. You never did question his authority—not authority—you never did question any suggestion

(Testimony of Dora F. Royce.)

he might have about putting money in some of the stock that he might be interested in, or some of these [343] ventures he may be interested in, or might have been?

A. Will you state that question again, please?

Q. You saw no reason to doubt him when he made any statement about how desirable it would be to loan him some money for the purpose of putting it into a venture of his? I mean, you would loan him the money at the mere suggestion that he needed it?

A. Well, no; no.

Q. What would you do?

A. Well, first, I would talk it over with him, and if I felt that it was a good thing, why, then I left it up to him to invest my money.

Q. He was able to convince you most times that what he was interested in was a good thing, is that true?

A. Well, not necessarily.

Q. Was there any time you remember that you didn't give him money when he asked you?

A. Well, I can't think of any—of an instance now.

Q. Now, you mentioned that Eunice wasn't told about the trust until she was eighteen?

A. That's right.

Q. That was when she started going to college?

A. Just about that time, yes.

Q. And then you knew that some small amounts were made available by your husband, into her—into her savings account, is that correct? [344]

A. Will you state that again?

(Testimony of Dora F. Royce.)

Q. That isn't too clear. You knew about amounts that were put by Mr. Royce, into her savings account, while she was going to school?

A. Yes. It wasn't the savings account, though.

Q. It was a checking account?

A. Checking account.

Q. They were small amounts, for purposes of expense, isn't that correct?

A. That's right; that's right.

Q. As far as you know, that is the only amount of money that was made available, that way, for Eunice?

A. Well, so far as I know.

Mr. Picco: That's all, your Honor.

Mr. Jones: Just a moment, Mrs. Royce.

Redirect Examination

Q. (By Mr. Jones): Your own income taxes, were they paid out of your—your distribution—
(interrupted)

A. That's right, yes.

Q. —your drawings? Now, out of some of these checks that bear the endorsement of Mr. Royce—that bear the endorsement of Mr. Royce, was any of this the money that went to the Aldergold Copper?

A. I don't know as I understand your question.

Q. Do you know whether any of this money got into Aldergold Copper?

A. These—these checks?

Q. Well, I guess—do you know whether any of this happened to go to Aldergold Copper or not, would you know definitely?

(Testimony of Dora F. Royce.)

A. No, I wouldn't.

Q. Now, as a parent, did you see any necessity or any reason why you should tell a child below eighteen years old that they had a considerable amount of money?

A. No, I certainly did not. I didn't think that she would understand just what was being done for her at that time.

Q. Did you think it would be good for her to know about it? A. No.

* * * * *

EUNICE ROYCE DODGE

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Eunice Royce Dodge, 38 Martin Place, Wenatchee, Washington.

Mr. Jones: I mis-called your name. I realize it's Mrs. [346] Dodge.

The Clerk: Dodge—D-o-d-g-e?

The Court: What is your married name?

The Witness: Dodge.

Direct Examination

Q. (By Mr. Jones): You went to the University of Oregon between '47 and '51, is that right?

A. That's right.

Q. What year did you become eighteen?

A. It was '47.

Q. What year did you graduate from high school? A. '47.

(Testimony of Eunice Royce Dodge.)

Q. And when did you first learn that there existed for you, a trust interest in this Seattle partnership of Yellow Cab Company?

A. I think I was about eighteen.

Q. And where, and under what circumstances did you first find out?

A. Well, it was at home.

Q. Who was present?

A. Well, my mother and father.

Q. And they told you about it? A. Yes.

Q. And what room did that take place in?

A. In the kitchen. [347]

Q. You recall the incident? A. Yes, I do.

Q. Now, you are—how long have you been married? A. Almost a year, June 12th, 1954.

Q. And at any time since you found out about the existence of this trust, had you ever heard any statement or suggestion from any source that that wasn't yours out and out bona fide yours as a beneficiary? A. No, I didn't.

Q. You regarded and understand it to be yours?

A. Yes.

Q. Had you ever made any—let's see—you were in college in '49, weren't you?

A. Yes, I was.

Q. And were you in college in '48?

A. Yes.

Q. And sums then were being taken from this source and put into your Portland bank account?

A. That's right.

Q. Where was that bank account?

(Testimony of Eunice Royce Dodge.)

A. At the First National.

Q. And you drew on that as you pleased?

A. Yes.

Q. Now, had you always regarded yourself as holding a substantial interest in this Seattle Taxicab Company? [348]

A. Since I found out about it, yes.

Q. Yes, and there has nothing ever happened in any way to cause you to doubt the reality—the validity of the deal? A. No.

Q. Now, when—that's all, you may cross examine.

Cross Examination

Q. (By Mr. Picco): Mrs. Dodge, is that the name? A. That's right.

Q. Do you know anything about the Yellow Cab partnership in Seattle?

A. Do I know anything about it? You mean how it operates, or?

Q. The operations of it, the capital structure of it? A. No.

Q. Do you know anything about the books?

A. No, not very much.

Q. You feel a little remote from that partnership completely, is that right?

A. Well, I haven't taken an active part in it.

Q. You don't know how much money it's making, or anything like that? A. No. I don't.

Q. You don't know anything about the returns that were made for you? [349]

(Testimony of Eunice Royce Dodge.)

A. The returns that were made for me? No.

Q. Do you know whether any returns were ever made for you?

The Court: Tax returns.

Q. Tax returns?

A. Tax returns, oh, yes, I signed quite a few of them.

Q. You signed the returns? A. Yes.

Q. When did you sign them?

A. Well, that is when I found out about it, when I had to start signing them after I was eighteen.

Q. This was in 1947? A. Yes.

Mr. Picco: May I have Exhibits double-U and triple-V?

The Clerk: V?

Mr. Picco: Double-U and triple-V. (Exhibits handed.)

The Clerk: You have got Z there. Here is Y.

Q. Now, here is the amended return for 1947, Respondent's Exhibit ZZ, did you sign that one?

A. No, that was by my father.

Q. All right. Of course, the original was signed by your father too, wasn't it? That is YY? Now, before 1947, obviously, you didn't sign any of those, did you? A. No, I didn't.

Q. And '47, you didn't sign them. Now, here is 48, which is Respondent's Exhibit triple-A, you didn't sign that either, did you, Mrs. [350] Dodge?

A. No, it doesn't have my signature on it.

(Testimony of Eunice Royce Dodge.)

Q. And the same for the year 1949, Respondent's Exhibit triple-V? A. No.

Q. You were mistaken about signing those, weren't you?

A. I signed many of them. I don't know whether—— (interrupted)

Q. You mean you signed the tax—tax returns involving this trust, and the money in the trust?

A. Yes.

Q. Do you know whether any trust tax returns were filed? A. Whether any were filed?

Q. Yes, whether any were ever filed?

A. Yes.

Q. You think they were? Were those the tax—trust tax returns that you were looking at? You wouldn't really know if you saw them that it was a trust return, would you, Mrs. Dodge?

A. Well, if I read it, I would.

Q. Do you know actually, of your own knowledge, that some trust tax returns were filed?

A. Well, that's what I thought they were, yes.

Q. From the years 1944 through 1949?

A. I don't know about 1944.

Q. Do you know about the other years? [351]

A. For about '48 or '49. I don't know about the earlier ones.

Q. Did you ever see the trust instrument?

A. Did I? No.

Q. You don't know anything about it, do you?

A. Well, I—I have had it explained to me, but I have never seen it.

(Testimony of Eunice Royce Dodge.)

Q. Who explained it to you?

A. My father.

Q. Did he—did your father ever make any accounting to you, as to the funds received from the Yellow Cab?

A. As to the amounts?

Q. Yes.

A. No.

Q. Have you ever asked him what your share was?

A. Yes, I did.

Q. For what year?

A. You mean my share in the company, or—
(interrupted)

Q. No, the share of the earnings from the partnership?

A. No, I didn't.

Q. You were letting that all off to your Dad, weren't you?

A. Yes.

Q. He has never made any report to you about the trust? About the funds of the trust?

A. Nothing particular.

Q. You don't know what he has been doing with the funds, do you, [352] if anything?

A. I know he has been loaning them.

Q. Loaning the funds—you mean he has been taking money for loaning to himself for use in some of his business?

A. Not in his businesses, no.

Q. In what business?

A. Well, I think one was the Aldergold Copper Company.

Q. Did he borrow some of the trust money for that purpose too?

A. I think so, yes.

Q. Do you know how much?

(Testimony of Eunice Royce Dodge.)

A. No, I don't.

Q. Did he ask your consent about that at all?

A. Yes, he did.

Q. He thought that it was necessary to do that?

A. Yes.

Q. Now, what would he show as evidence of these loans to you, or were you interested in knowing?

A. I wasn't interested in knowing.

Q. Anything he would have done would have been all right with you, is that right?

A. Well, yes, I trusted him, if that's what you mean.

Q. You don't know anything about notes he might have executed?

A. Any notes?

Q. Yes, in your favor? [353]

A. Well, I believe he did give notes, for the loans.

Q. You don't know though, actually?

A. Not definitely, no.

Q. And you have had no interest in finding out, have you?

A. No.

Mr. Picco: I have no other questions, your Honor.

Mr. Jones: I have one.

Redirect Examination

Q. (By Mr. Jones): You are sure you signed tax returns?

A. Yes, I am.

Q. All right. Now, whether you had—whether that was just for the portions of the trust that you personally received, along with the earnings that you made—you worked somewhere, didn't you?

(Testimony of Eunice Royce Dodge.)

A. Yes, I did.

Q. Where did you work?

A. The Imperial Travel Bureau.

Q. And you worked there from when to when?

A. That was in March of '52 to March of '54.

Q. And you know that you signed tax returns for something? A. Yes.

Q. But could you be confused as to just exactly what the tax returns were?

A. Yes, that could be.

Q. Did you ever sign waivers, or anything like that, or do you [354] know exactly what— (interrupted)

A. Not that I know of, no.

Q. But whatever intending—they had you report it and sign the returns for? A. Yes.

Mr. Jones: Okay.

Recross Examination

Q. (By Mr. Picco): Do you know of any amount that you did receive from the trust?

A. Any amount that I received? Well, yes, when I was in college, I got about two hundred dollars a month.

Q. Actually, you don't know the status of the trust at all, do you? The funds—you don't know the status of it all?

A. You mean the amount of it?

Q. The amount, status of it?

A. No, I don't.

Q. During the years 1944 to 1949, where you— (interrupted) A. No. [355]

* * * * *

B. ROYCE

a witness called on behalf of the Petitioners, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record? [357]

The Witness: B. Royce. R-o-y-c-e.

Direct Examination

Q. (By Mr. Jones): Mr. Royce, where do you reside? A. In Santa Barbara.

Q. You formerly resided where?

A. Vancouver, Washington.

Q. Where did you reside in 1945?

A. Vancouver, Washington.

Q. What was your occupation in 1945?

A. In the taxicab and—— (interrupted)

Q. And what else—— (interrupted)

A. And I had a farm over there—a dairy farm.

Q. And how much time did you devote to the supervision of your farm?

A. Quite a bit of the time there in those years. The help situation—the turn-over was very heavy, and I put in a lot of time at the farm.

Q. In '45? A. That's correct.

Q. Now, then, in 1945, did you make an investment in the stock of Oregon Motor Stages?

A. I did.

Q. And how much did you invest, sir?

A. Fifty thousand dollars. [358]

Q. Was that your own money? A. It was.

Q. And was that for your own interest and your own benefit? A. That is correct.

(Testimony of B. Royce.)

Q. Did you have any interest in the investment made by Mr. Bentson? A. I did not.

Q. Did you have any interest whatever in the investment made by Mr. E. Royce?

A. I did not.

Q. When Mr. Bentson turned in his stock, and it was paid for by the corporation and cancelled, did you get any gain from it? A. I did not.

Q. Were you intended to get any gain from it?

A. No.

Q. Were there any contracts of any kind that you would have any interest in that, or any gain from it? A. There was not.

Q. Or that you had any interest in the stock of any of the other purchasers of the Oregon Motor Stages stock? A. None whatsoever.

Q. Now, your wife, during the years '42 through '49, was Isabelle Royce, is that correct?

A. Yes.

Q. And was she one of the partners in the Oregon Yellow—in [359] the Yellow Taxicab Company, the Portland partnership?

A. She was.

Q. And was she—was her interest as a partner ever challenged? A. Never.

Q. Do you—were you present when the Seattle and the Portland corporations that preceded the Seattle and the Portland cab partnerships were dissolved? A. I was.

Q. One meeting took place, I believe in Portland in '42, and the other in Seattle in '44?

(Testimony of B. Royce.)

A. That's right.

Q. Was Mrs. Dora F. Royce there?

A. She was.

Q. And your wife? A. Right.

Q. And the partners in those two companies—what—had they always recognized Mrs. Dora Royce as a partner? A. That's right.

Q. Was she intended to be a partner?

A. She was.

Q. Now, did you ever take in any money yourself personally in 1947—I am on the taxicab issue. I will have to wait for this question, your Honor. Strike the last, please—the last question. Do you know whether or not Dora Royce ever performed any services [360] on behalf of the Portland Taxicab partnership? A. Yes.

Q. And what was the nature of her services?

A. Well, both Dora and Isabelle they done a lot of checking in different places, when they was in stores, and driving along the streets, and the like of that, and—— (interrupted)

The Court: A little louder, please.

A. The condition of the drivers, and the number of passengers they had in the cabs, and if the cab looked clean, and so on and so forth; and when they were driving, so see if the driver was driving—doing things that he shouldn't do—they would make out a slip and turn it in and check them out.

Q. And did you have conferences between yourself and the other three partners in this company?

A. Yes.

(Testimony of B. Royce.)

Q. And did the women take part in them?

A. They did.

Q. And take part in the decisions that were made?

A. That is correct.

Q. When did you arrive in Portland, Mr. Royce—on this trip here?

A. I came in last night.

Mr. Jones: And you may cross examine. Just a moment please.

Q. (By Mr. Jones): Oh, Mr. Royce, did you buy an interest in [361] the—Hippodrome Amusement? Are you interested in the Hippodrome Amusement Company?

A. I am.

Q. And do you know whether or not it had any plans for the improvement, building upon its Seaside properties?

A. Yes, we—we built some buildings there, and—— (interrupted)

Q. Have you been negotiating for others at any time?

A. Yes, we have had some prospects on—we had one here a while back that fell through. We were about ready to go ahead. The plans were out and everything, but that deal fell through.

Q. Now, do you know whether or not—there is testimony in this case that twenty thousand dollars has been drawn from the company—has been paid by the company to Mr. E. Royce. Do you know the circumstances under which he—— (interrupted)

A. That was not paid to him, it was loaned to him, until the company, or the Directors decided

(Testimony of B. Royce.)

that it should go back into the company, and at that time, he'd pay it back.

Q. That was the understanding at the time?

A. That is correct.

Q. Has it ever been forgiven to him?

A. Never.

Q. And you still expected—you still expect it to be paid back?

A. Absolutely. [362]

Mr. Jones: You may cross examine.

Cross Examination

Q. (By Mr. Picco): Mr. Royce, do you know about the negotiations for the purchase of the Oregon Motor Stages stock?

A. Just what angle are you talking about now? I don't— (interrupted)

Q. About the negotiations, do you know anything about that, or were you on the sidelines on it?

A. I was on the sidelines on that.

Q. You were on the sidelines too, as far as negotiations for the loan from American Business Credit Corporation, weren't you?

A. I was, yes.

Q. Now, you state that you and your wife were living in Washington—the State of Washington?

A. That is correct.

Q. And you treated yourselves as a community—under the community property laws of the state, did you not?

A. That's right.

Q. Now, as far as the Hippodrome issue is concerned, the plans for improvement—can you tell me when those plans were conceived?

(Testimony of B. Royce.)

A. Those last ones I just mentioned?

Q. Yes.

A. Well, that was with the Postal Department in Seattle, they [363] were—oh, I think when he called me up first—I forget his name, down in Santa Barbara, and I told him that Roy was handling that, to get in touch with him up here, and then they got the plans out and everything, and the ground that they had figured on building it on, and then, for some reason or other, they decided to put it in another location, and we didn't get the deal.

Q. You had plans for the improvement of the building there, or for reconstruction of a building as early as 1945, didn't you? A. Yes.

* * * * *

E. ROYCE

a witness recalled by the Petitioners assumed the stand and testified as follows:

Direct Examination

Q. (By Mr. Jones): Mr. Royce, during your examination, and I am not sure, but [364] I think both were on direct examination—there were statements made, which, as I checked over your testimony, seems to me to be a little confusing. At least, it is confusing to me, and I want to ask you about these two questions: At one time, in asking you about the gift of the shares of stock in the Portland partnership of Yellow Cab Company, the fourteen hundred shares to your wife, Dora F. Royce, your testimony was, and if I don't speak it exactly

(Testimony of E. Royce.)

verbatim, it is not because that I am trying to make any shading on it, it is just that I don't have the exact words in my mind, for I haven't asked the Reporter to look them up. But, they were to the effect that you intended her to become a partner; at another time, that the gift was made, as I recall the testimony, without strings. Now, which—I am confused by those two apparently conflicting statements. I wish you would explain that, please?

A. The gift was made without any condition whatever. It was an outright gift. I was in hopes that she would become a partner, but she was under no obligation to do so.

Q. Well, what if she hadn't have?

A. Well, the remaining partners would have then have to purchase her interest, or she could have sold to someone else, if it had been agreeable to the rest of the partners.

Mr. Jones: You may cross-examine.

Cross Examination

Q. (By Mr. Picco): You want that to constitute a change in your testimony of [365] yesterday?

A. I don't know if it is much of a change. Probably a little clarification.

Q. This clarification came after discussion with your attorneys after the—after yesterday's or Saturday's trial?

A. Well, he seemed to be confused on my answer, and wanted to clarify it.

* * * * *

DORA F. ROYCE

a witness recalled on behalf of the Petitioners, assumed the stand and testified as follows:

Direct Examination

Q. (By Mr. Jones): Now, Exhibit 22, those bank statements that are in evidence show a considerable amount of money had been deposited in your bank account at the Sixth and Morrison Street Branch in Portland, Oregon, over the years '44—may I see 22, please? I believe it is for '47. (Exhibit handed) Yes, through the year '47. Where did that money come from that was deposited in that account?

A. From my earnings in the Yellow Cab Company.

Q. From the Cab Company? [366] A. Yes.

Q. Both Portland and Seattle?

A. That's right.

Q. Now, then, there was testimony on cross-examination that you would cash these checks, or at least a good many of them. Will you explain then, how the money, after you had cashed the checks, would get into this bank account?

A. Well, I would take it from my—from my safety box and place some of it in my account at the other bank.

Q. Now, did you ever cash checks and then put part of it into your purse, and at the same time put some in your bank account?

A. Yes, I did that at times, too.

Mr. Jones: You may cross-examine.

Mr. Picco: No questions, your Honor. [367]

* * * * *

FANNIE ORSEN

a witness called on behalf of the Respondent, first having been duly sworn, testified as follows: [433]

* * * * *

Direct Examination

Q. (By Mr. Picco): Mrs. Orsen, did you give your address, where you are living?

A. No. 616 S. E. 38th Avenue.

Q. And you are testifying here pursuant to a subpoena, aren't you? A. I am.

Q. Did you have occasion to meet L. R. Bentson during your lifetime? A. Yes.

Q. Did you know him well? A. Yes.

Q. Will you please state the circumstances?

A. Well, I lived with my aunt and uncle for about nine years.

The Court: I can't hear you. Face this way.

A. All right. I lived with them for about nine years, from 1909 to '18. [434]

Q. You were related to Mr. Bentson, weren't you? A. Yes, Mr. Bentson married my aunt.

Q. You are also related to Mr. Ezra and Barney Royce, aren't you?

A. Well, I wouldn't say that.

Q. You were very friendly to them?

A. I have know them for years.

Q. Now, you were very close to Mr. and Mrs. Bentson, I take it. Did you state in 1908—(interrupted) A. 1909.

(Testimony of Fannie Orsen.)

Q. 1909 to 1918? A. To 1918, yes.

Q. Did you live with him? A. Yes.

Q. Where was that? A. Vancouver, B. C.

Mr. Jones: I didn't hear your answer.

A. Vancouver, B. C.

Q. Have you kept in touch with Mr. Bentson during all these years?

A. Yes, he came down here—came down here to visit every once in a while.

Q. Would you—would he make very many visits to Portland?

A. Oh, about once a year, probably. Maybe not every year. [435]

Q. When would he come, normally? Or usually, if you know? A. Oh, that would vary.

Q. Would it be in the—what season of the year?

A. Well, in the—in the summer.

Q. Is Mr. Bentson still living? A. No.

Q. When did he die, do you know?

A. 1950, I think it was. April 1950.

Q. How old was he when he died?

A. Eighty-one.

Q. Did he leave an estate? A. Yes.

Q. How do you know?

A. I was the Executrix of the estate.

Q. Did you inherit some property from him too?

A. I did.

Q. Were there any other heirs? A. No.

Q. You were the sole heir? A. Yes. [436]

* * * * *

(Testimony of Fannie Orsen.)

Q. Now, you testified you were the sole heir of the estate, did you not? A. Yes.

Q. Did you receive thirty-three thousand, six hundred and seventy-three dollars and six cents from the estate? A. I did not.

Q. What did you receive?

A. Something like thirty thousand. Thirty thousand.

Mr. Picco: I move this into evidence.

A. After expenses. [439]

* * * * *

Q. (By Mr. Picco): Mrs. Orsen, you knew Mr. and Mrs. Bentson very well during the years 1908 to 1950, at the time of his [453] death?

A. 1909.

Q. 1909 to 1950. And you lived with them for ten to twelve years? A. Nine years.

Q. You knew their habits, did you not?

A. Well—(interrupted)

Q. Did they live expensively? A. No.

Q. Did they live a modest life?

A. They did.

Mr. Jones: Did they what?

Q. Live a modest life? What kind of a home did Mr. and Mrs. Bentson have?

A. They had about a twelve room home, I believe.

Q. When was that?

A. Well, that—I don't know when—I don't remember when they built it, but probably it was 1910 or 11, I am not positive.

(Testimony of Fannie Orsen.)

Q. And did he later—do you know whether that is the same home he lived in all the time?

A. No. They sold it later on.

Q. Well, when—when did he do that?

A. I don't remember the date.

Q. Now, what kind of home did he have then?

A. After he sold the other one?

Q. Was it a—(interrupted)

A. Small place.

Q. Now, on his visits to Portland, how long would he stay, normally, or usually?

A. You mean with me, or with the boys?

Q. Well, just when he would come to Portland?

A. Well, I couldn't say exactly.

Q. Would he stay—would you be able to say he stayed more than two or three days or a week?

A. Well, I think he would stay probably four or five days.

Q. Now, was it usual for him to visit you when he came? A. Yes.

Q. That would be—would it be unusual if he didn't visit you if he came to Portland?

A. Well, I think it would.

Q. Now, Mrs. Bentson, is she still living?

A. No.

Q. Did she die before Mr. Bentson?

A. Yes, sir.

Q. Do you know approximately what year?

A. I think '46, but I wouldn't be positive.

Q. Do you remember Mr. Bentson's visit to Portland in 1945?

(Testimony of Fannie Orsen.)

A. Well, I don't know—to remember each year he was [455] here that when he would come down. If he was here in '45 why, I probably—(interrupted)

Q. Do you have anything that might fix your mind on that, as to whether he was here in 1945?

A. Well, I think, as I remembered it, he called me up and said that he was in town, and he would be out to see me.

Q. This was in 1945?

A. I wouldn't say whether it was '45 or not.

Q. Do you—(interrupted)

A. I am not positive.

Q. How do you remember that he was in 1945—do you have something that gives you a remembrance of that? Did you see something in the paper, or something like that?

A. Oh, there was an article in the paper some time after he—weeks, I suppose, I don't know just when—(interrupted)

Q. Do you have that clipping with you?

A. I think it's in one of those.

Q. I wonder if you would spend a little time looking for it? (Documents handed)

A. Here it is.

Mr. Picco: Will you identify that—mark it?

The Clerk: Respondent's Exhibit four M's for identification.

(Respondent's Exhibit MMMM, witness Orsen, marked for identification.) [456]

(Testimony of Fannie Orsen.)

Q. I hand you Respondent's Exhibit four M's for identification, which purports to be a clipping concerning Oregon Motor Stages, and ask you whether that is your handwriting on that clipping?

A. Uh huh, yes; yes, sir.

Q. And what is that—that is the date that it was received?

A. Well, I suppose that was the date of the paper. I thought he would be interested in seeing his name in the paper (laughter)—send it to him.

Q. Did you take the clipping, and what did you do with this clipping? Did you send it to Mr.—
(interrupted)

A. Oh, I sent it in a letter that I had written to him.

Q. Now, the date here is—what is that date on there? A. That is July the 12th.

Q. Would you say you sent it about that time?

A. I couldn't tell you; I just don't remember. It might have been weeks after; it might have been—I don't know—I don't remember.

Q. This does fix in your mind his visit to Portland in 1945? A. Yes.

Q. This is what you would use? A. Yes.

* * * * * [457]

Q. (By Mr. Picco): Do you know how long he was in Portland at that time?

A. No, I do not.

Mr. Picco: That's all, your Honor.

The Court: You may cross-examine.

Mr. Jones: Just a moment, please.

(Testimony of Fannie Orsen.)

Cross Examination

Q. (By Mr. Jones): Did Mrs. Schneider—Mrs. Bentson, I mean to say—did Mrs. Bentson die about 1947?

A. '46 or 7, I wouldn't be positive.

Q. Did she become afflicted before her death with throat cancer?

A. Well, I think she was troubled with it; she didn't know what it was, but she was troubled with it.

Q. You don't know of your own information what the difference in his financial worth between 1945 and 1950, at the time of his death might have been—what change there may have been in it, do you?

A. He never confided in me in anything in regards to his [460] financial affairs.

* * * * *

ROBERT D. AMOS

a witness called on behalf of the Respondent, first having been duly sworn, testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Picco): What do you do, Mr. Amos?

A. I am Chief of the Intelligence Division in the Internal Revenue Service at Helena.

The Court: Speak a little louder please, Mr. Amos.

A. At Helena, Montana. [461]

Q. How long have you been with the Internal Revenue Service?

(Testimony of Robert D. Amos.)

A. Since 1940, except that I was in the Navy from 1942 to 1946.

Q. How long have you been in the Special Intelligence Division? Of the Internal Revenue Service?

A. Since 1940.

Q. What is your personal place of—your present place of duty?

A. Helena, Montana.

Q. Did you ever serve in the Special Intelligence Division in Portland, Oregon?

A. Yes, I was on duty in Portland from 1946 to 1954.

Q. What did your duties consist of?

A. I was a Special Agent. Most of my work consisted of investigating income tax fraud cases.

Q. Did you ever have occasion to prepare financial statements, and net worth statements in your capacity as Special Agent?

A. Yes, I did.

Q. Are you an accountant?

A. Yes.

Q. Are you a certified public accountant?

A. Yes.

Q. Do you have a license to practice accounting?

A. Yes, I have a certificate in Oregon. [462]

Q. Did you ever have occasion to investigate and examine the business affairs of the Petitioners in these proceedings?

A. Yes.

Q. In connection with their income tax liability?

A. Yes.

Q. For what particular years?

A. 1944 through 1949.

Q. How did this occasion arise?

(Testimony of Robert D. Amos.)

A. An information report was received in the Intelligence Division from Revenue Agent L. H. Norris (phonetic), which he wrote in September, 1948, setting out findings of his examination; he discontinued his examination because he found some reason to suspect fraud in the case. He referred the case to the Intelligence Division. It was assigned to me during the fall of 1948.

Q. How long did the investigation take, as far as you were concerned?

A. A year and a half from—during the active investigation. I did some work after that time.

Q. What initial steps did you take, if any?

A. I first talked to Revenue Agent Norris, and Revenue Agent Donald Nicholson (phonetic), after he was assigned to the case.

Mr. Jones: Would you speak a little louder, please?

A. Yes, sir. And the first active work which we did was on January 3rd, 1949.

Q. What did you do then? [463]

A. Revenue Agent Nicholson and I went to Vancouver, B. C., and we first went to the United States Consul's Office to get some information about Mr. Bentson. We found that he was born in 1869, in Iowa, was a United States citizen, had been a resident in Canada since 1906. We obtained his address there; we also found the name and address of the relative to notify in case of emergency, it was Mrs. Fannie Orsen. Our next step was to interview

(Testimony of Robert D. Amos.)

Mr. Bentson. On the same day, Mr. Nicholson and I went to Mr. Bentson's home, at North Vancouver.

Q. What sort of a home did he have?

A. I would have judged it to be a about a five-room house. I was only in the front room—didn't count the rooms, but it was a rather modest appearing home. The lot was not large, I would judge the frontage was fifty to seventy-five feet. The furnishings—— (interrupted)

Q. Was it a comfortable home?

A. I beg pardon?

Q. Was it a comfortable home?

A. Yes, it was comfortable.

Q. Did you see Mr. Bentson? A. Yes.

Q. Will you describe his appearance?

A. Yes, he was an elderly gentleman. He was not particularly well dressed—rather comfortably dressed. I recall that he had on a sweater. [464]

Q. Did you have any conversations with Mr. Bentson concerning his participation in the purchase of seven hundred and fifty shares of Oregon Motor stock, and the loan of three hundred and fifty thousand dollars from the American Business Credit Corporation? A. Yes, I did.

Q. What did he say?

Mr. Jones: If the Court please, that is calling for hearsay, and we object to it on that basis primarily?

Mr. Picco: They have testified to conversations with Mr. Bentson. I think Respondent should be given the same opportunity, your Honor.

(Testimony of Robert D. Amos.)

Mr. Jones: On anything—— (interrupted)

Mr. Picco: And, in particular, to seek to refute some of the things that they claim were said in those discussions.

The Court: I think he should be allowed to testify.

Q. Please answer the question.

Mr. Jones: Well, I have this other objection on this ground, that any conversations that we made were right at the time of the transaction; not five years remote from the transaction, or four years remote from the transaction, and at the time when Mr. Bentson, was, if he died at eighty-one in '50, was approaching the age of eighty, and I feel that any conversation at that time is too remote in the memory of that witness to be entitled to be received here, and consequently irrelevant and immaterial.

The Court: That objection is overruled. [465]

Q. Will you please state what conversation you had with Mr. Bentson?

A. Yes, first, Mr. Nicholson asked Mr. Bentson to explain about the purchase of the Oregon Motor Stages stock. Mr. Bentson then stated that he knew very little about it, and referred us to Ezra Royce and Barney Royce—rather, he stated that they handled most of and he did not remember how it was worked out. He then stated that most of his contact in the transaction had been with Ezra Royce. He mentioned that no money had changed hands in connection with this transaction, and Mr. Nicholson asked him what collateral he put up, in connection

(Testimony of Robert D. Amos.)

with the loan. He refused to state what collateral he had put up.

Q. Was the—was Mr. Bentson cooperative in replying to your questions?

A. Not entirely. He refused to answer any questions about the collateral for the loan.

Q. Did he say anything further about his participation, if any, in the negotiations for the loan of three hundred and fifty thousand dollars?

Mr. Jones: Do you have—if the Court please, does this witness have any independent recollection of this? I would like to know whether he is reading his answers or is testifying from memory?

A. I am refreshing my memory from notes that I took at the time of the interview. [466]

Mr. Jones: I should like to see the notes when you are through with them.

A. I don't recall that he made any statement about the negotiations for the loan.

Q. Did you have any other interviews with Mr. Bentson? A. No, sir.

Q. And that is the extent of the conversation?

A. Yes.

Q. What questions did you ask Mr. Bentson?

A. We asked him the — rather, Mr. Nicholson asked him the general question first, to explain his stock transaction with Oregon Motor Stages. Following that—— (interrupted)

Q. Did he answer that question?

A. He answered it by referring us to Ezra Royce

(Testimony of Robert D. Amos.)

and Barney Royce, and then he followed up with some general statements to the effect that no cash had been put up. I also asked him some questions as to whether he was in Portland at the time of the transaction. He said that he was, and whether he intended to participate in the management. He said that he took it over, that his nephews helped him in running it, but he found it too big, and turned the business over to them. I asked him whether he sold the stock for the same price he paid for it, and he said, "Just about." Finally, he stated that he wanted to find out what the trouble was, and referred us again to Mr. Royce.

Q. What other steps did you take in your investigation of this matter? [467]

A. On January 4th, 1949, Mr. Nicholson and I interviewed Ezra Royce at his office at the Yellow Cab Company regarding the stock transaction in Oregon Motor Stages.

Q. What did he have to say? At that time?

A. Well, he explained that Mr. Bentson obtained a loan from the American Business Credit Corporation. We asked him what collateral was put up. He said that he didn't remember who put up the collateral, and he referred us to Claude McColloch and Robert Jacob, who, he said, were the attorneys who handled the transaction.

Q. Did he say anything about the arrangements for the loan? Did he say who, if anybody, had anything to do with that?

(Testimony of Robert D. Amos.)

A. I will have to refresh my memory. I am not sure.

Q. Just go ahead and look at your notes — as much as you desire.

A. All right. (Referring to notes.) Regarding the arrangements for the loan, he stated that Claude McColloch and Robert Jacob were the attorneys who handled the arrangements with the loan.

Q. Would you tell us about his attitude in the interview?

A. He was cooperative. He did not furnish us many details. He did refer us to Mr. Jacob for further information.

Q. Did you have any other interviews with E. Royce relative to the stock transaction?

A. Not relative to the stock transaction.

Q. What did you do then? [468]

A. On January 7th, 1949, Mr. Nicholson and I interviewed Robert Jacob at his office, and we also examined—— (interrupted)

Mr. Jones: I can't hear you.

A. And we also examined certain records of the Oregon Motor Stages — the stock certificate, the sheet from the minute book, certain records which Mr. Jacob produced and showed us specific pages only.

Q. What questions did you ask him, if you asked him any, and what answers did you receive, if you have—if you recollect?

A. The questions which were asked were merely

(Testimony of Robert D. Amos.)

the general question regarding the asking him for an explanation of the purchase—— (interrupted)

The Court: Can't you speak a little louder? It's difficult to hear you.

A. We asked him only a general question as to an explanation for the purchase of the stock of Oregon Motor Stages. He explained that Mr. Schneider and Ezra Royce had approached him, and asked him to go in with them in buying the stock. He said that he negotiated with the former stockholders, and he said that he had nothing to do with Mr. Bentson's purchase of stock. He said that he believed Mr. Royce made the arrangements for that. He said that he introduced Mr. Bentson and Mr. Royce to Mr. Davidson of American Business Credit Corporation, and Mr. Bentson then obtained a loan. He did not know what collateral was pledged.

Q. Do you have Exhibit 9? (Exhibit handed.) Did you say you [469] examined some of the records that were in Mr. Jacob's possession at the time?

A. Yes.

Q. Do you remember what some of those were?

A. Yes, there was a letter from Mr. Bentson, offering to sell his stock to the corporation. There was a page from the corporate minutes authorizing the corporation purchase the stock, and there was the stock certificate which had been issued to Mr. Bentson.

Q. I hand you Petitioner's Exhibit 9, and ask you if that is the letter that you saw on that date.

(Testimony of Robert D. Amos.)

It is dated August 31, 1945, from—written by Mr. Bentson, to Oregon Motor Stages?

A. Yes, it is.

Q. And where was that written from, do you know?

A. The date mark has been typed in as Vancouver, B. C., but it is apparent that there was an erasure underneath the D. C. and—— (interrupted)

Mr. Jones: Now, if the Court please, I should think that that is a question for the Court to determine and not a witness as what may have been erased out and typed in, and I object to this gentleman unless he can qualify as an expert on typing and the correction of documents to give that opinion.

The Court: The objection is overruled.

Q. The objection is overruled. You may answer.

A. When I examined this originally, I was able to determine [470] that the word "Washington" had originally been written under "D. C." At this time, I cannot tell what was written there originally.

Mr. Jones: Hold it up to the light and I think you can still tell. I am not cross-examining yet, pardon me.

Q. That was your determination at the time?

A. Yes.

Q. What else did you do in Mr. Jacob's office at this time?

A. I examined the minutes of the meeting of Oregon Motor Stages dated September 5th, 1945,

(Testimony of Robert D. Amos.)

which stated, "Resolved that this company shall purchase a—and retire three hundred fifty shares of stock belonging to L. R. Bentson at the price of one thousand dollars per share, out of the surplus, and that the stock so purchased shall be cancelled." I also examined the stock certificate number seventy-seven for three hundred fifty shares issued to L. R. Bentson on July 2nd, 1945, and I observed that on the back, there was an assignment in blank, which was undated, and was signed by L. R. Bentson.

Q. Did you have any further conversation with Mr. Jacob at that time, or at any later time?

A. No, I don't recall any further conversation regarding this matter.

Q. What—what did you do then? What was the next step in your examination?

A. On the same day, January 7th, '49, Mr. Nicholson and I talked to Malcolm Clark (phonetic) of Portland, who is an attorney, and who stated that he had been the attorney—— (interrupted) [471]

Mr. Jones: Now, if the Court please, on that, he is not a partner in the case—not involved in it. I wish to renew my objection that with respect to Mr. Malcolm Clark, that that would be entirely irrelevant as to—— (interrupted)

The Court: Objection sustained.

Mr. Picco: Did you say sustained, your Honor?

The Court: Yes.

Q. What steps did you take to find anything about the—examine the records of the American Business Credit Corporation, Portland office?

(Testimony of Robert D. Amos.)

A. My investigation disclosed that the Portland office had been closed prior to 1949, and that the records of the company had been shipped to their main office in New York, so I wrote a request to the Special Agent in Charge at New York City, to have a Special Agent call at the main office and obtain photostatic copies of various records pertinent to the loan, three hundred and fifty thousand dollars.

Q. Did you receive those records? A. I did.

Mr. Picco: I think we have stipulated that all of those records are in evidence, your Honor, with the possible exception of Respondent's Exhibit A which will come out later.

Q. What else did you do in your examination of this matter?

A. I examined the records of Oregon Motor Stages—I examined the voucher register, which reflected a check entered on September 6, 1945, payable to L. R. Bentson in the amount of [472] three hundred fifty thousand dollars, and which was debited three hundred fifteen thousand dollars to surplus, thirty-five thousand dollars to capital stock. I also examined another entry in the voucher register dated September 17th, 1945, for a check payable to American Business Credit Corporation, in the amount of three thousand seven hundred thirty-nine dollars seventy-three cents, which was charged to interest expense in the books. That was all—the only examination I made at that time of Oregon Motor Stages' records.

(Testimony of Robert D. Amos.)

Q. Now, that interest—how much was that interest expense—what amount did you say?

A. Three thousand seven hundred thirty-nine dollars seventy-three cents.

Q. Did you see anybody else in connection with the case?

A. Yes, I saw George W. Davidson, at his office in Portland. Mr. Nicholson and I both called on him.

Q. Did you have a conversation of—with him?

A. I did.

Q. What did he say, if anything?

Mr. Jones: Same objection, your Honor.

The Court: Objection sustained.

Mr. Picco: Sustained? Would you let me have Exhibit C? (Exhibit handed.)

Q. I hand you Respondent's Exhibit C, and ask you whether you had an occasion at any time to examine that—that exhibit during your examination?

A. I have examined the document of which this is a copy. I—— (interrupted)

Q. That is correct. A. ——am sure.

Q. You examined the original document?

A. I examined the document which was in the possession of Revenue Agent Donald Nicholson at the time, which I understood to be the original document.

Q. And this is a copy of that? A. Yes.

Q. Now, what does that purport to be?

Mr. Jones: It has already been identified, your Honor, and introduced.

Q. Will you please describe that?

(Testimony of Robert D. Amos.)

A. That is headed "Portland, Oregon, July 17, 1945." Addressed to "Oregon Motor Stages," and states: "In account with George W. Davidson, Pacific Building, to services rendered, fee, four thousand three hundred fifteen dollars seven cents. Approved for voucher July, charge to account forty-six twenty. O.K. Signed E. Royce."

Q. That latter thing there—the O.K. was signed by E. Royce, is that it?

A. Yes, that was signed in pencil, as I recall.

Mr. Picco: Will you mark that as Respondent's Exhibit?

The Clerk: Respondent's Exhibit four N's for identification. [474]

(Respondent's Exhibit NNNN, witness Amos, marked for identification.)

Q. I hand you Respondent's Exhibit four N's for identification, which purports to be an affidavit by George W. Davidson, and ask you whether you notarized that affidavit? Or notarized his signature thereon?

A. Yes, I acknowledged the signature in this affidavit on March 25th, 1949.

Q. Will you state in summary form what that affidavit consists of?

Mr. Jones: I object to that as irrelevant, incompetent, immaterial, purely hearsay—none of the Petitioners having been present or had a chance to question or examine Mr. Davidson on it.

The Court: What do you say?

(Testimony of Robert D. Amos.)

Mr. Picco: In this connection, your Honor, they testified about dealings they had with Mr. Davidson, and what may have been said at those conversations and interviews with Mr. Davidson, and I think the Respondent should have the opportunity of showing this, which is his affidavit, or better yet, let the agent state what Mr. Davidson did tell him. It refutes, actually, what Petitioner said Mr. Davidson did or said to them, and it involves the same period of time, and involves the same matter in negotiations.

The Court: The objection is sustained.

Q. (By Mr. Picco): Did you interview — Mr. Amos, did you [475] interview any other official of American Business Credit Corporation, other than George Davidson?

A. I interviewed Malcolm Clark.

Q. Well, you have passed on that already. In addition to Malcolm Clark?

A. No, I did not.

Q. Why is that?

A. I could find nobody else in Portland who knew anything about—who had been connected with American Business Credit Corporation. The Portland office had been dissolved or abandoned some time before. I learned of only one official, Mr. Sheaffer (phonetic) who had been Credit Manager, and he was reported to be in Los Angeles. I could not locate him.

Q. Now, what did you do further, if anything, on your examination?

(Testimony of Robert D. Amos.)

A. I interviewed Mr. Schneider and Mr. Niederkrome.

Q. Would you please tell us about those interviews?

A. Mr. Nicholson and I interviewed Mr. Schneider on January 19th, 1951, at his office at Oregon Motor Stages. Mr. Schneider gave us the background on how Oregon Motor Stages came to be acquired. He said that he had been invited to come to Portland by Mr. Royce to consider acquiring an interest in Yellow Cab Company, but that he decided not to buy an interest in that firm. While he was here, he learned that Oregon Motor Stages' stock was for sale, so he interested Mr. Royce in acquiring Oregon Motor Stages' stock. He said that [476] at first, they lined several investors, but they backed out, and finally Mr. Royce said that he knew an old gentleman who had money, and who would come into the deal. Mr. Schneider did not recall his name at first. He identified him as a shirt-tail relative of Mr. Royce. But when Mr. Nicholson asked him if his name could have been Bentson, he replied that it was. He mentioned that Mr. Bentson's appearance did not suggest very much wealth. He said he did not know how Bentson paid for the stock. He recalled that a loan had been obtained from some loan company, and he recalled that Bentson sold his stock within two or three months, and he thought that Bentson realized a small profit in the sale. He also thought that there may have been some expense in connection with acquiring the stock.

(Testimony of Robert D. Amos.)

Q. Did he say anything about collateral for the loan?

A. He said that he didn't know what collateral was put up. Now, he explained that his own stock certificate was pledged as collateral to Mr. Royce; that he delivered his stock certificate to Ezra Royce, in connection with a loan that—which he had obtained from Mr. Royce. He explained that the total cost of his stock was fifty thousand dollars, and that he was able to raise only twenty-seven thousand dollars at the time, although he expected to raise the balance by the sale of some other property, so he borrowed the balance of the money from Mr. Royce and delivered his stock certificate to Mr. Royce.

Q. Did he tell you about conducting Mr. Bentson on a survey and tour of the route of Oregon Motor Stages? [477]

A. He did not.

Q. Did he discuss the future of Oregon Motor Stages as he saw it?

A. Yes, he did.

Q. What did he say about that?

A. He said that at the time, that he and Mr. Royce and the others bought the stock, that he and Mr. Royce discussed the future of the company, and it was then their opinion that the company would prosper after the war. He had two reasons for it. One was that they thought that wage rates would be reduced following the war, and the second reason was that they expected the population of Oregon would double within the next ten years.

(Testimony of Robert D. Amos.)

Q. Did anything else transpire at this interview?

A. No, that—that's all that I recall that—oh, I did discuss several other issues but Mr.—with Mr. Schneider that had nothing to do with the stock transaction.

Q. You mentioned that you had an interview with Fred Niederkrome too? A. Yes.

Q. Would you tell us some about that?

A. On January 16th, 1951, Mr. Nicholson and I interviewed Fred Niederkrome in our office at the Financial Center Building, Portland. Mrs. Maudie F. Niederkrome was also present. We discussed several issues with Mr. Niederkrome, but among them, we asked him some questions about his acquisition of stock in [478] Oregon Motor Stages. He explained that he had no capital of his own; that he had given his note to Mr. Royce for fifty-five thousand dollars; that he also assigned his stock certificate to Mr. Royce as security for the note.

Q. For his own note?

A. Yes, his own note. He mentioned being present in the conference room at the First National Bank at the time the stock was exchanged from the old stockholders to the new stockholders. He said that he had never heard any discussion regarding Mr. Bentson's interest, that he knew Mr. Bentson acquired stock, but he didn't know why it happened, and he said, as far as he knew, Mr. Bentson may still own stock in the corporation. He said he did not know whether stock was put up as collateral for the loan by American Business Credit Corpora-

(Testimony of Robert D. Amos.)

tion, but he did know that a loan was obtained and he explained the general financing of the transaction. He said that the new group of stockholders put up four hundred thousand dollars, and they borrowed three hundred and fifty thousand dollars. He said he thought that the loan was obtained by the corporation, and he did not know how or when the loan was repaid. That was all that was material to that issue.

Q. Did you have any other interviews in your examination of this matter?

A. No other interviews concerning this one issue of the stock transactions. Oh, pardon me, I did too. I interviewed—— (interrupted) [479]

Q. Did you interview Mrs. Fannie Orsen?

A. —Mrs. Orsen, yes. That was about two years later. It was after we had written our final report and thought the case was closed, and then we learned that Mr. Bentson had died, and that Mrs. Orsen was the Executrix. I interviewed her at her home. I examined certain records.

Mr. Picco: May I have Respondent's Exhibits four B's, four C's, four E's, four G's and H's? (Exhibits handed.)

Q. Did you say you examined the records that were in the possession of Mrs. Fannie Orsen at that time? A. Yes.

Q. I hand you Respondent's Exhibit four E's and ask you if this is one of the exhibits that you—one of the records that you looked at?

A. I would say that I looked at it, but I didn't

(Testimony of Robert D. Amos.)

do anything with it. I was interested in transactions which occurred during the year 1945 and subsequent to it, and I did observe that there were daybooks, from sometime in the middle 1930's up to date, but I did not—— (interrupted)

Q. You didn't use this book in your analysis?

A. No.

Q. I hand you Respondent's Exhibit four C's; it purports to be a daybook, from January 1, 1942, and ask you whether you used that or examined that book?

A. (After examining exhibit.) Yes. Yes, I did.

Q. Will you tell us a little about the examination of that exhibit—book—the daybook? A. Yes.

Q. It's Exhibit four C's?

A. I found that this daybook consisted of a series of income accounts, single entry record, in which there was listed rental income, interest income, dividend income and some sales of stocks. There was also an annuity listed with the income or payments received on that.

Q. The entries covered what period of time on that book?

A. It says on the face of it from January 1, 1942, but I notice that certain assets were entered prior to that. The Government annuity was acquired in October 1934, and as I recall right now, I think that was about the earliest date in here. It goes up until 1950. There were entries in here as late as the middle of 1950.

Q. Now, will you look over the entries for 1945

(Testimony of Robert D. Amos.)

and tell us what was recorded for those years—for that year, '45?

Mr. Jones: Well, doesn't the exhibit speak for itself? I object to this as unnecessary.

The Court: It doesn't seem necessary to me to go into these entries.

Q. Can you tell us—all right, your Honor. Can you tell us whether the Oregon Motor Stages's stock was recorded as being bought or sold in the year 1945 in that book?

A. It was not recorded in any way in this book. I examined [481] this book particularly with that in mind and found no entries in here regarding it.

Q. I hand you Respondent's Exhibit four B's which purports to be the—the photostatic copy of the inventory of the estate, and ask you if you examined that and used that in your analysis?

A. Yes, I did. I examined this and I prepared a statement of net worth of Mr. Bentson as at January 1st, 1945 and as at December 31st, 1945. I used the values in the inventory of the estate for certain assets whose values I was unable to obtain from any other record. I also used entries in the daybook in preparing that. In some cases they were cost figures, and other cases there were sales figures for assets sold later than 1945, and I used the sales figure as the value of the asset in some cases.

Q. Did you have occasion to use Respondent's Exhibit four H's, which has reference to the Government annuity in your analysis?

(Testimony of Robert D. Amos.)

A. I used the amount of the annuity—I got the amount from the daybook rather than from this record. I do not recall seeing this particular record, but I noticed that the amount of payment was thirteen thousand six oh eight.

Q. That's on there.

A. Which was the same figure which I found entered in the daybook as the cost, and I used that figure in the net worth.

Q. And did you have occasion to use Respondent's Exhibit four G's, which purports to be the bank account—savings bank account of Mr. Bentson? [482]

A. (After examining exhibit.) Yes, I did. I examined this bank account. I made a transcript of all the entries in it from the beginning of 1945 until the end. I used the balance at January 1, 1945 and at December 31, '45 in my net worth statement, and I also used one of the figures appearing in 1946, the deposit there to—— (interrupted)

The Court: Speak loudly.

A. To determine the cost or rather value of one tract of real estate. Mr. Bentson's daybook reflected rental from a house and a garage at 1246 Hornby (phonetic) Street. His last rental payment in the daybook was, I believe, March 1st, 1946, and I found a deposit in the passbook—savings account, of seven thousand nine hundred twenty-four dollars eighty-three cents on May 16, 1946. In the absence of any

(Testimony of Robert D. Amos.)

further information, I used that amount as the value of the real estate at 1246 Hornby Street.

Q. Do you have your comparative statement there, that you prepared? A. Yes, I do.

Q. Will you let me see it?

Mr. Picco: I want to have this marked.

The Clerk: Respondent's Exhibit four O's for identification.

(Respondent's Exhibit OOOO, witness Amos, marked for identification.)

Q. I show you Respondent's Exhibit four O's for identification, [483] and ask you to identify that, if you may?

A. This is a comparative statement of net worth of Louis R. Bentson, as at the beginning and end of the year 1945, which I prepared on May 1st, 1952. The information which I used in preparing it was first, the entries in the daybook, covering the year 1945 and subsequently; I also used the inventory of Mr. Bentson's estate, and I used the savings account passbook. At this time, I believe that was all that I used.

Q. What obligations, if any, did you use on this comparative state—— (interrupted)

A. I had—I had no record of any liabilities.

Q. And what did you do with the annuity?

A. I showed the annuity separately at the bottom so that it could be either left in the total or taken out of the total. The cost of the annuity in 1936 was thirteen thousand six hundred and eight

(Testimony of Robert D. Amos.)

dollars. In 1945, its value would be considerably less, but I am not an actuary, and I couldn't determine it. The net worth, including the annuity at cost, would be forty-eight thousand six hundred thirty-four dollars six cents at the beginning of 1945, and fifty thousand five hundred eighty-six dollars twenty-one cents at the end of 1945. And subtracting the annuity, the net worth would have been—— (interrupted)

Mr. Jones: Now, wait a minute, I object to the net worth for the simple reason that there is no showing that he has all of the information that would go in and be necessary to make a net [484] worth statement accurately.

Mr. Picco: If your Honor please——(interrupted)

The Court: The statement would show what it shows as to sources, and the weight to be given it would be another question. He may testify.

Mr. Picco: Yes, that is what I was going to say. It might go to the weight of it. It certainly compares with some of the statements——(interrupted)

The Court: Part of the——(interrupted)

Mr. Picco: I'm sorry.

The Court: It is part of the Respondent's theory at least.

Mr. Picco: We move that into evidence.

Mr. Jones: I have the same objection that I have noted—that there is no showing that——(interrupted)

(Testimony of Robert D. Amos.)

The Court: It will be received.

(Respondent's Exhibit OOOO, witness Amos, received in evidence.)

Q. (By Mr. Picco): As you were saying, if you leave the annuity out of that comparative statement, what is the net worth statement of Mr. Bentson at the end of 1945, and at the beginning of 1945?

A. (Examining Exhibit.)

Mr. Jones: As shown by that statement, you mean?

Mr. Picco: Yes, as shown on this statement, Respondent's [485] Exhibit four O's.

A. By leaving the annuity out, the net worth at the beginning of 1945 would be thirty-five thousand twenty-six dollars six cents; at the end of 1945, it would be thirty-six thousand nine hundred seventy-eight dollars twenty-one cents.

Q. And what real property assets do you have on that?

A. I have two tracts of real property; one was described as his home in the inventory of the estate, and contained the legal description, "Lot one and two, block fifty-three." The value of that was forty-two hundred dollars, as taken from the inventory of the estate. Then I have a house and garage at 1246 Hornby Street, which was reflected in the daybook as rental property. The value of that I took from a bank deposit, which appeared shortly after the last entry for any rent in the daybook.

(Testimony of Robert D. Amos.)

Q. That's all, the rest will show on there. I will take these. [486]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Jones): May I see the memoranda that you first testified from?

A. (Memoranda produced) This is the first sheet.

Q. Now, this memoranda would be typed up from your memory of a conversation that you had, is that correct? [507]

A. I took some pencilled notes at the time of the conversation. That memoranda was typed up two days later by using my pencilled notes and my memory.

Q. But there was a couple of days elapsed between the taking it and the typing it up?

A. Yes, that's true; yes.

Q. Now, let me see also the first pencilled notes—or the first memoranda you made at Mr. Royce's interview—first interview with him. I would like to see that other one again also, if I may.

A. (Producing memoranda and notes.)

Q. (After examining memoranda) Well, now, in this interview you had with Mr. Bentson on the 3rd of January, 1949, he did tell you that he had lived in British Columbia for about forty years, and that he had spent ten years of it in mining around Nome, didn't he? I would like to have you look at your second paragraph there. (Memoranda exhibited.)

(Testimony of Robert D. Amos.)

A. You are right except for one point. He said he had lived there for the last forty years, and he had spent ten years mining around Nome, which I think was prior to the forty-year period, yes.

Q. But that he had spent time mining around Nome? A. Yes.

Q. And when he was asked whether or not he was able to put up a half a million dollar collateral, he said "yes," didn't he?

A. Yes, that's what he said. [508]

Q. He experienced some hard of hearing while he was—while you were talking to him, and it was a little difficult to conduct a conversation, wasn't it?

A. Yes, as I recall, he was a little hard of hearing.

Q. May I also see your first one with the interview with Mr. Royce?

A. (Producing memoranda.)

Q. Now, this was dictated the day after you had your conversation, wasn't it?

A. Well, it was typed by me the day after I had the conversation, and it was based on notes which I took at the time of the conversation.

Q. And in this, Mr. Royce informed you that Mr. Bentson had received the same price he had paid for the stock?

A. I am sure of that, yes, I would have to—yes. [509]

* * * * *

Q. (By Mr. Jones): Did he also explain to you that Mr. Bentson's wife had got sick, and that the

(Testimony of Robert D. Amos.)

war was over, and Mr. Bentson wanted to get out?

A. Yes.

Q. He also told you at that time that Mr. Bentson had made eight or nine hundred thousand in Alaska mining?

A. May I see that? (Paper handed.) Yes, he did. [510]

* * * * *

Q. This was the sheet that you refreshed your memory of from your conversation with Mr. Niederkrome? A. Yes, that is correct.

Q. (Examining document) Now, in this, Mr. Niederkrome in this conversation also told you that he expected to own the stock in Oregon Motor Stages—had no capital—had given his note to Mr. [511] Royce for fifty-five but—fifty-five thousand, but that later, the ICC ruled that he could not be a stockholder? A. Yes.

Mr. Picco: That has been stipulated.

Mr. Jones: The stockholders—not the ICC part.

Mr. Picco: Yes, it has.

Mr. Jones: Oh.

Q. And he said also that he told you that the stock was transferred to Mr. Schneider without any gain to him? A. Yes.

Q. Now, do you recall in that conversation whether he made a distinction between the time when this stock was posted as collateral with ABC, and after Mr. Bentson paid his note, and it was subsequently then maybe pledged with Mr. Royce for the remainder of the balance of that note be-

(Testimony of Robert D. Amos.)

cause the facts up to this point show that Bentson was in the picture from July to September?

A. Uh huh.

Q. And then, that Mr. Royce—Mr. Niederkrome sold his stock in '46, and that there was a period between September of '45 and June of '46, when he was still indebted to Mr. Royce, and that that may have been the period that he was pledging his stock for?

A. I didn't understand it that way from his conversation. I understood that he endorsed his stock and gave it to Mr. Royce at the time it was acquired in July, 1945.

Q. Well, from what you found out subsequently from your [512] investigation with ABC, you learned that the stock had been pledged with ABC, didn't you?

A. Yes, but it could, at first, have been given to Mr. Royce, and he could have turned it over to the ABC.

Q. Well, in any event, there is no disposition on your part to imply that the stock wasn't pledged with ABC?

A. Oh, no.

Q. Okay.

A. Mr. Niederkrome didn't know that it had been pledged with them, and he had a good reason that he had given his stock to Mr. Royce.

Q. Well, now, that's your opinion of the matter, isn't it?

A. Yes, but he did say that he didn't know that

(Testimony of Robert D. Amos.)

it had been pledged with ABC, he admit——(interrupted)

Q. Did he say that? A. Yes.

Q. Did he tell you that it hadn't been pledged with ABC?

A. May I look at that again? I am pretty sure that he did. (Document exhibited.) Well, he said he did not know whether stock was put up as collateral with ABC.

Q. Well, now, this was—this meeting was in '51—that was six years after the event, wasn't it?

A. Yes.

Q. Did he get out any records while he was talking to you? A. No. [513]

Q. He was just talking from memory to you?

A. Yes.

Q. (Examining document) Now, was not your testimony on direct examination that the loan of three hundred and fifty thousand that Mr. Niederkrome stated was made to—was made by ABC to Oregon Motor Stages?

A. Yes, he said that he thought it was.

Q. Yes, he thought it was in here. Now, that was six years after the transaction took place, and he didn't refer back to any documents or anything when he was talking to you?

A. No, he did not.

Q. Now, could not that possibly have been that what he said was he thought the loan was paid, rather than made by ABC—or by the corporation to ABC?

(Testimony of Robert D. Amos.)

A. That wasn't my understanding.

Q. Well, could you have misunderstood him on that point, possibly?

A. May I look at that a moment again?

Q. Yes, you may.

A. I think not, because following that, he did make the statement regarding the repayment, to the effect that he did not know how or when the loan is repaid.

Q. You typed this up after your conversation, didn't you?

A. Yes, I typed it on the—that's January 16—I typed it the same day. [514]

Q. But you typed it subsequent to your talk with him?

A. Yes, uh huh.

Q. And there is a possibility that you could have misunderstood him there, isn't there?

A. Well, just a moment, I might look at my original notes that I made right at the time. (Checking notes.) No, my original notes, I have two statements, that he does not know how or when the loan was repaid—probably an obligation to the corporation, and following that, he thinks the loan was to the corporation.

Q. But he never categorically said so—that it was to the corporation?

A. Oh, he just said he thought it was, yes.

Q. Yes, and then, we said it was a long time after the events?

A. Yes. [515]

* * * * *

Q. Let me see this one now, please? (Document

(Testimony of Robert D. Amos.)

handed.) (Examining document.) Now, on this net worth statement that you prepared for Mr. Bentson, you had nothing to work with in doing that except such records as you got from his niece?

A. That's true. That included the inventory of the estate.

Q. Yes, but you had never talked to Mr. Bentson about what his assets were, and try to secure a list of those from him?

A. I had attempted to.

Q. Well, you didn't get any, did you? You didn't have any?

A. He would not give us the information.

Q. You didn't have them, that is my question?

A. No.

Q. And you don't know what his worth was in 1945 at all?

A. No, except as his records reflected, his daybook and passbook.

Q. That was all built backwards from 1950 with such information as you got from the niece, and the inventory?

A. The daybook, of course, was examined in 1952, but the information in it was recorded from about 1936, up through 1950.

Q. Yes, but you had to assume that that was the only records that he had that recorded his transactions when—that and the inventory and the bank statement and the annuity?

A. True enough. I didn't know whether there could have been other records. [518]

(Testimony of Robert D. Amos.)

Q. There could have been other records, and there could have been assets not reflected there?

A. Quite true.

* * * * *

DONALD D. NICHOLSON

a witness called on behalf of the Respondent, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record?

The Witness: Donald D. Nicholson, Portland, Oregon.

The Clerk: That is N-i-c-h-o-l-s-o-n, or how do you spell it?

The Witness: Correct. [519]

Direct Examination

Q. (By Mr. Picco): What do you do, Mr. Nicholson? A. I am an Internal Revenue Agent.

Q. How long have you been an Internal Revenue Agent? A. Since October 8, 1945.

Q. Did you assist Mr. Amos in the examination and investigation of the income tax liability of Mr. Royce and the other Petitioners in these proceedings? A. I did. [520]

* * * * *

Q. Now, Mr. Nicholson, did you hear Mr. Amos testify today? A. Yes.

Q. Did you hear him testify as to interviews with Mr. Bentson, Mr. E. Royce, Mr. Schneider, Mr. Jacob? A. Yes.

Q. Were you present at those interviews?

(Testimony of Donald D. Nicholson.)

A. Yes.

Q. If asked the same questions as to what transpired at those conferences or interviews, would your answers be substantially the same as Mr. Amos' answers? A. Yes, sir.

Q. Would you verify the account of what transpired—Mr. Amos' account of what transpired at those conferences? [521]

A. By the use of notes, I could. [522]

* * * * *

E. ROYCE

a witness recalled by the Respondent, assumed the stand and testified as follows: [527]

* * * * *

Cross Examination* * * * *

Q. (By Mr. Jones): Now, there is one other question I want to ask this witness that goes back to the partnership accounts while I have him on the stand. When you were—when your wife Dora was cashing some of these distribution checks, did the tellers ever require your signature?

A. Yes, they did.

Q. Would you sometimes be with her at the window at the time?

A. Most of the time, because those checks were large amounts and she didn't feel that she wanted to be alone. [535]

Q. Do you know whether or not she ever—or whether the deposits in her account were made from her distributions? A. Yes, they were.

* * * * *

Mr. Picco: Now, if your Honor please, we have no other witnesses, but I do have an exhibit that I want to introduce at this time. It is Respondent's Exhibit A for identification. It has been stipulated that it is a true and correct copy of the meeting of the Executive Committee of American Business Credit Corporation, the parent company, in which the loan—the application loan for three hundred and fifty thousand dollars was acted upon and considered. There is going to—the objection to this instrument will be given by Mr. Jones. I want to move it into evidence, and I would like to state my grounds, your Honor.

The Court: Tell me again exactly what it is?

Mr. Picco: It is a copy of the minutes of a meeting of the Executive Committee of American Business Credit Corporation; the Delaware corporation, that is the main corporation. It owned the subsidiary corporation, American Business Credit Corporation, Portland, held on June 20, 1945, at its offices in New York, and it [536] refers to the application for loan of three hundred and fifty thousand dollars, and it was acted upon and considered at this meeting, and we have—— (interrupted)

The Court: This is by the parent company?

Mr. Picco: That is correct, and it is duly certified by the Custodian of the records. As you remember, it has been stipulated into evidence that the Portland corporation was dissolved, and the records were transferred to the parent corporation. This is a part of the negotiations phase of the stock question, Section 115G. It is an integral part of those—

of the records of the lending institution. We have stipulated, and there is in evidence, other exhibits which make up the rest of that file from the lending institution. We have Exhibit 1, which is the joint note signed by the Petitioner, Ezra Royce and L. R. Bentson. We have Exhibit B, which is the check by American Business Credit Corporation, made payable to L. R. Bentson and Ezra Royce for three hundred and fifty thousand dollars, and the money comes from the New York office to the Portland office. Exhibit C, the invoice dated July 17, 1945, showing Oregon Motor Stages paying finance charges to George W. Davidson, of American Business Credit, in the amount of four thousand three hundred and fifteen dollars and seven cents—Exhibit D, which is a cash receipts report of American Business Corporation, showing receipt of this four thousand three hundred and fifteen dollars and seven cents, and referring to the E. Royce and L. R. Bentson account. Respondent's Exhibit E, which is a cash receipts report of American Business [537] Corporation, showing a receipt of three hundred and fifty thousand dollars, reference, E. Royce and L. R. Bentson account. We have Respondent's Exhibit F, bank account of American Business Credit Corporation, the parent office, home office, New York, showing deposit by the Portland branch, American Business Credit Corporation to the account of the American Business Corporation, parent corporation, September 17, 1945; and we also have Exhibit G, the account, "Royce and Bentson" on the ledger sheet of American Business

Credit, Portland. All of these are part and partial to the files of the lending institution, and I move the admission of this document, Respondent's Exhibit A, for identification on that ground.

Mr. Jones: I would like to be heard on that, because we strenuously object to its admission in evidence on the ground that it is incompetent, irrelevant, immaterial, and purely hearsay. These other documents that he meant—mentioned where there were payments back and forward, we had no objection to and consequently were quite willing to assist the Government by admitting them and putting them to no trouble. Here, there is an affidavit by a person who was not an officer of the corporation at the time the affidavit—at the time the transaction took place, he was the Secretary at the time the affidavit was made—he—certifies to that affidavit—through that affidavit that the photostat there is a true copy of minutes of a certain meeting. Those minutes, however, report a report of Mr. Davidson who is dead. There is no showing that Mr. Royce or Mr. Jacob or Mr. Bentson or anybody else was back east. [538] There is no evidence that they were there; that they knew what Mr. Davidson was saying. The affidavit, the report of Mr. Davidson, at that Executive Committee in the east was the purest kind of hearsay. He was the Manager out here trying to get a loan through. And we weren't—no party—no purchaser was there being represented. I want it clearly understood that I have stipulated that I have no objection to the authenticity or to the identity of this thing, but I have strenuous objec-

tions on the grounds of materiality and hearsay. I would like to just cite a sentence or two from two cases. They are—one is a Federal case, one hundred and forty Federal, three eighty-five, on page 402, which states, “that the records of a private corporation are not competent evidence against third persons to establish their relation of stockholders to the corporation, or to approve the contracts between them and the corporation, in the absence of proof of their knowledge—the third person’s knowledge, and a set to the minutes,” and that is the case of *Harrison versus Remington Paper Company*. I will also cite, and I have several here, but I will only cite the two of them—the case of *Morrow West (Phonetic) versus some corporation*—I can’t read the name of it, in second Southern forty, at page forty, in which it says, “the books of a corporation are admissible against the company and its members only on the principle that they are admissions. They are not evidence against strangers.” And here, it is the purest kind of hearsay, with none of these people there whom he seeks to bind or to charge with whatever is in those minutes. Furthermore, I point out [539] in the affidavit, that in paragraph six of the affidavit, the gentleman who made it, attempts to state something about a loan when the affidavit bears the date of 1955, the 21st day of April, about something that happened ten years before, when he wasn’t present or knew anything about it. And for that reason, I think it is the purest hearsay. We object to the photostat and to all parts of the affidavit, insofar as they state facts.

Mr. Picco: We also have authorities for that proposition, basically, and very soundly, it is part of the records of the lending institution, and it has genuineness and reliability because of that. It is very clear from reading that that they acted and considered the loan application, and I think it is very material to the case, and I think it is admissible under the authorities.

The Court: The objection is overruled; the document may be admitted. Exhibit A.

The Clerk: Admitted?

The Court: Admitted.

(Respondent's Exhibit A received in evidence.) [540]

* * * * *

AUGUST WENCK

a witness called on behalf of the Petitioner, first having been duly sworn, testified as follows:

The Clerk: Will you please state your name and address for the record, please?

The Witness: August Wenck. [542]

The Clerk: Will you spell your name, please?

The Witness: W-e-n-c-k. 902 Madison Street, Seattle, Washington.

Direct Examination

Q. (By Mr. Jones): Mr. Wenck, how long have you lived in Seattle? A. Since 1932.

Q. What is your occupation in Seattle?

A. I am Manager of the Seattle Yellow Cab Company.

Q. And were you connected with the Seattle

(Testimony of August Wenck.)

Yellow Cab Company prior to 1944? A. Yes.

Q. Was it a corporation then? A. Yes.

Q. And liquidated?

A. About that time.

Q. In the middle of 1944. I am not going into the exact—— (interrupted)

A. I am not sure that that is the exact date. I don't have that with me. But it is about at that date.

Q. All right, and was there a liquidation meeting in Seattle of the stockholders of that company?

A. Was there a meeting?

Q. Liquidation meeting—when it was dissolved?

A. Yes. [543]

Q. Was Mrs. Dora F. Royce present?

A. Yes.

Q. And Mr. Royce? A. Yes.

Q. Mr. E. Royce, Mr. B. Royce? A. Yes.

Q. I believe Mrs. Isabelle Royce was there?
I don't know, but anyway—— (interrupted)

A. I don't think so; I can't remember.

Q. The three that I mentioned? A. Yes.

Q. You were there? A. Yes.

Q. And they were stockholders in the company at the time? A. Yes.

Q. They turned in their stock? A. Right.

Q. A partnership was formed? A. Yes.

Q. Now, then, you have at all times, since this partnership, been its Manager? A. Yes.

Q. And does the partnership regard Mrs. Dora F. Royce as a bona fide partner?

(Testimony of August Wenck.)

A. Oh, yes. [544]

Q. Always has? A. Yes.

Q. Does she do any work for the partnership?

A. She gives me lots of help and assistance whenever she is in Seattle, and I am always glad to have her visit Seattle.

Q. How frequently does Mr. Royce come to Seattle? A. Not very often.

Q. I am talking of E. Royce?

A. I assumed you were.

Q. Yes. A. Not very often.

Q. And is her time in Seattle somewhat equivalent to his time?

A. Well, I think she gets up there a little oftener than he does.

Q. What kind of work does she do when she is there?

A. Well, she helps in a general way, in doing some checking on drivers, and concessions, and reports to me what she sees in cab activities around town, when she is there, at department stores, hotels, and things like that.

Q. Has she ever had conferences with you concerning the company?

A. Always reports to me every time she is there.

Q. And did she ever discuss policy with you?

A. Well, she reports incidents like when a cab is dirty, or a [545] driver isn't tidy, or some discourteous part on the part of a driver, or someone else, a starter, why, she has no hesitancy telling me

(Testimony of August Wenck.)

about it, giving me the time and the place that it occurred.

Q. I have requested you to bring down some distributions of dividends checks, did you bring them?

A. Yes, I have them here.

Mr. Jones: I would like to have two packages of checks marked as exhibits.

(Petitioner's Exhibits 43 and 44, witness Wenck, marked for identification.)

Q. Now, then, does—is there a partnership in there for Eunice Royce, represented by E. Royce, trustee? A. That's right.

Q. And does it get distributions?

A. It does.

Q. Is that regarded as a valid partner in the thing? A. Absolutely.

Q. Do they get distribution—does the trustee get distributions for Eunice? A. That's right.

Q. Are those checks also here? A. Yes.

Q. I am going to hand you first, Exhibit number 43 for identification, and ask you if this is the group of checks for 1945, through 1949, that are the distribution checks made to Mrs. Dora F. Royce?

A. These checks are made to Mrs. Royce.

Q. Are they her distributive share?

A. Yes.

Q. Where are the 1944 checks? Were you able to find them?

A. No, and I don't think you will find the '48's in here. In fact, I know you can't. We tried very hard the other day to locate them.

(Testimony of August Wenck.)

Q. Oh, aren't the '48's there?

A. The '48's are not in there.

Q. And the '44's? A. That's right.

Q. Is that all the checks you could find?

A. This was from May 31st, '45. We could find them if we wanted to tear the place apart a little more, but it was quite a job to get those.

Q. All right, were all of the distributions shown on her—on the books of the company—— (interrupted) A. Oh, yes.

Q. ——made to her? A. Oh, yes.

Q. By checks similar to this? A. Yes.

Q. I am handing you herewith Exhibit number—— (interrupted)

The Clerk: Petitioner's Exhibit 44 for identification.

Mr. Jones: I would like to offer Exhibit 43 first, in [547] evidence.

Mr. Picco: I have no objection, your Honor.

The Court: It may be received.

(Petitioner's Exhibit 43, witness Wenck, received in evidence.)

Q. (By Mr. Jones): Now, I would like to hand you here, Exhibit number 44 for identification, and ask you to please state what that is?

A. These checks are made payable to E. Royce, trustee, and credited to the account of E. M. Royce.

Q. Now, does that represent this Eunice interest in the partnership?

A. Eunice Royce, and her name now is Mrs. Dodge.

(Testimony of August Wenck.)

Q. Mrs. Dodge? A. Yes.

Q. And those are in distribution of her—— (interrupted) A. Interest in the partnership.

Q. Now, are there any missing checks over the years—— (interrupted)

A. '48's are also missing from that group, I think.

Q. And what about '44?

A. That same period, I think—May 31st, '45.

Q. Any distribution shown by the books in evidence—were they actually made by similar checks?

A. That's right. There is a record of every one of those [548] checks.

Q. Is her interest recognized the same as Mrs. Royce's, as a bona fide interest in the company?

A. She's a partner.

Q. And you at all times recognize her and understand her to be a partner? A. Positively.

Q. Now, in—— (interrupted)

The Court: Are you offering 44? Are you offering the '44 checks?

Mr. Jones: Oh, yes, I am offering 44.

The Clerk: Was 43 admitted?

Mr. Jones: And we offer 44.

The Clerk: Now just a minute.

The Court: It is admitted.

(Petitioner's Exhibit 44, witness Wenck, received in evidence.)

Q. I would like to know, in 1945, if anybody every—ever contacted you with respect to becoming

(Testimony of August Wenck.)

an investor in the Oregon Motor Stages, an Oregon corporation? A. Me, you mean?

Q. Yes. A. Yes.

Q. Who contacted you with respect to buying stock in that company? [549]

A. Mr. E. Royce.

Q. Has the Yellow Cab Company of Seattle, during the period 1949 on—1944 on, shown any losses? 1944 on to date, shown any losses?

A. Definitely for the past two years it has shown losses.

Q. Have these two accounts of Dora F. Royce and Eunice Royce been charged with their share of those? A. Oh, yes.

Mr. Jones: You may cross examine.

Mr. Picco: I have no cross examination, your Honor, except I do want to point out, just for your information without having to go into the record that the Petitioner's Exhibit 43, which are the checks going to Dora F. Royce—everyone of them on the reverse side, has been endorsed in blank to Ezra Royce—endorsed in blank to Ezra Royce.

* * * * *

F. C. NIEDERKRÖME

a witness recalled by the Petitioners in rebuttal, testified as follows:

Direct Examination [550]

Q. (By Mr. Jones): Will you kindly explain how your stock is pledged—both—could be pledged both to ABC and to Mr. Royce, if it was pledged to Mr. Royce?

(Testimony of F. C. Niederkrome.)

A. I don't think—— (interrupted)

Mr. Picco: Will you state that question again?

Q. Will you kindly explain how your stock happened to be pledged both to ABC and Mr. Royce, if it was pledged to Mr. Royce?

A. Of course, originally it was pledged to ABC, in July; then when the Oregon Motors paid the loan, I may have pledged it to him after that date.

Q. Now, you are talking about your Oregon Motor stock, during the time you were a stockholder?

A. Yes, after the time I—after June of 1946.

Q. Did you talk to the Revenue Agents along in 1950 or '51, wherever it was—did you get any of your records out to look up and see exactly what the transactions were? A. No, I didn't.

Q. You were talking solely from memory then?

A. That's right.

Q. Giving them your recollection the best as it was without refreshing it? A. Yes.

Q. Now, did you ever tell any Revenue Agent that the loan was—of three hundred and fifty thousand was made to the Oregon Motor Stages? [551]

A. I don't think so. I think what I told them was that the payment was made by the Oregon Motor Stages.

Q. At least you have no recollection of ever attempting to leave such an intention, such an impression as that?

A. No, as a matter of fact, I don't remember that they asked me that question.

(Testimony of F. C. Niederkrome.)

Mr. Jones: You may cross examine.

Cross Examination

Q. (By Mr. Picco): Mr. Niederkrome, you—now, you say that you pledged the Oregon Motor Stages' stock twice?

A. After the loan was paid, the certificate came back to me, but I was indebted to Mr. Royce. If I pledged it at all to him, I pledged it to him as a loan on which I was obligated.

Q. Mr. Royce was — waited — waited for the pledge on his loan—his loan was back in July 2, 1945, wasn't it?

A. That is right.

Q. But he accommodated you when he pledged —when you pledged it over on the other loan of three hundred and fifty thousand dollars?

A. I pledged along with the other stockholders on the ABC loan.

Q. Then when the three hundred and fifty thousand dollar loan was paid up, why, it became a collateral for the loan that you had taken out formerly from—— (interrupted) [552]

A. That would be the time, if I pledged it at all as collateral. I can't ever remember them, and I can't remember stating that I had pledged it.

Mr. Picco: That's all, your Honor.

Redirect Examination

Q. (By Mr. Jones): That, however, in any event, was an actual purchase of stock on your own responsibility?

A. That's right. [553]

* * * * *

A. L. SCHNEIDER

a witness recalled by the Petitioners, in rebuttal, testified as follows:

Direct Examination

Q. (By Mr. Jones): Will you come back, Mr. Schneider. You can answer this question right there if you want to. In your pledging of your stock, what stock did you pledge to Mr. Royce?

A. The stock that I pledged to Mr. Royce was the fifty-five shares that was purchased from Mr. Niederkrome when the ICC asked him to divest his interests.

Q. And not your fifty shares you originally purchased? [555]

A. The first fifty shares that I purchased was never pledged to Mr. Royce.

* * * * *

Mr. Picco: We have a stipulation here. It is not in my handwriting. I know the matter of fact of it, but I will try to read it, for what it's worth. "It is stipulated between the parties by their respective counsels that the fair market value of the common capital stock of Aldergold Copper Company was seven and a half cents per share in each of the years 1947, 1948 and 1949," now, that is what we settled on—"and in determining what income if any E. Royce received from that source in said year, that value may be used. It is further stipulated that testimony may be taken by deposition to determine the number of such shares E. Royce received in each of those years, if any. It is further stipulation—

(Testimony of A. L. Schneider.)

stipulated that Petitioner — that Petitioners — that petitions of E. Royce may be amended in such manner as necessary to conform them to the proof.” That means we will need a deposition. Outside of that, I think the case is completed. [556]

* * * * *

[Endorsed]: T.C.U.S. Filed June 9, 1955.

[Endorsed]: No. 15724. United States Court of Appeals for the Ninth Circuit. Fred C. Niederkrome, E. Royce, Dora F. Royce, Ezra Royce, B. Royce, Estate of Isabelle H. Royce, Deceased, B. Royce, Executor, Robert T. Jacob, Agnes C. Jacob, Albert L. Schneider and Bertha Schneider, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: September 16, 1957.

Docketed: September 26, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 15724

Fred C. Niederkrome; E. and Dora F. Royce; Ezra
Royce; B. Royce; Estate of Isabelle H. Royce,
Deceased, B. Royce, Executor; Robert T. and
Agnes C. Jacob; Albert L. and Bertha Schnei-
der, Petitioners,

vs.

Commissioner of Internal Revenue, Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONERS INTEND TO RELY

Come now the petitioners, by their attorneys Louis Eisenstein, Randall S. Jones, and Eberhard P. Deutsch, and hereby state that they intend to rely on the following points in these proceedings on appeal from judgments of the Tax Court of the United States:

The Tax Court of the United States erred:

(1) In holding and deciding that an amount paid in 1945 by Oregon Motor Stages to L. R. Bentson in retirement of all the stock held by L. R. Bentson in Oregon Motor Stages, and that certain incidental disbursements paid by Oregon Motor Stages in the same year, constituted distributions taxable as dividends to the individual petitioners and the deceased Isabelle H. Royce.

(2) In admitting into evidence respondent's Ex-

hibit A, which purports to be a copy of the minutes of the Executive Committee of American Business Credit Corporation, a Delaware corporation, held on June 20, 1945, certified by the treasurer and assistant secretary of the said corporation.

(3) In holding and deciding that the petitioner Ezra Royce was taxable for the years 1944 through 1947 with respect to the income of a partnership, doing business as Yellow Cab Company in Portland, Oregon, which was distributable to his wife Dora F. Royce.

(4) In holding and deciding that the petitioner Ezra Royce was taxable for the years 1945 through 1947 with respect to the income of a partnership, doing business as Yellow Cab Company in Seattle, Washington, which was distributable to his wife Dora F. Royce.

(5) In holding and deciding that the petitioner Ezra Royce was taxable for the years 1945 through 1947 with respect to the income of the said partnership, doing business in Seattle, Washington, which was distributable to a trust for the benefit of his daughter Eunice M. Royce.

(6) In holding and deciding that the petitioners Ezra Royce and Dora F. Royce were taxable for the years 1948 and 1949 with respect to the income of the said partnership, doing business in Seattle, Washington, which was distributable to the said trust.

(7) In holding and deciding that the sum of \$20,000 advanced by Hippodrome Amusement Com-

pany to the petitioner Ezra Royce in 1945 was taxable to him as a dividend.

(8) In that its opinion and decisions are not supported by but are contrary to the evidence and its findings of fact.

(9) In that its opinion and decisions are contrary to law and the Commissioner's regulations.

/s/ LOUIS EISENSTEIN,

/s/ RANDALL S. JONES,

/s/ EBERHARD P. DEUTSCH,

Counsel for Petitioners.

Acknowledgment of Service Attached.

[Endorsed]: Filed Sept. 26, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties, subject to the approval of the Court, that the documents and exhibits included in the transcript of the consolidated record in the cases on review need not be printed, and that the aforesaid documents and exhibits not incorporated in the printed record shall be considered for all purposes as a part of the printed record herein and may be referred to by counsel in their respective briefs and on oral argument; or reproduced in whole or in part in an appendix to their briefs; and considered by the Court

with the same force and effect as if actually included in the printed record on review filed herein.

s/ LOUIS EISENSTEIN,

Counsel for Petitioner.

s/ CHARLES K. RICE,

Assistant Attorney General,

Counsel for Respondent.

[Endorsed]: Filed Sept. 26, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD OF PRINTING

Petitioners hereby designate for printing the following parts of the record in the above-entitled causes material to the consideration of the petitions for review:

1. Docket entries of all proceedings before the Tax Court.

2. Pleadings before the Tax Court, as follows:

(a) Petitions, including annexed copies of notices of deficiencies.

(b) Answers.

3. Introductory paragraph of Stipulation of Facts filed on May 14, 1955; paragraphs numbered 11, 12, 13, 14, 15, 18, 22, 23, 24, and 25 of said Stipulation of Facts; and the two paragraphs

headed "Exhibits," appearing immediately after paragraph 43, of said Stipulation of Facts.

4. Supplemental Stipulation of Facts filed on June 1, 1955.

5. Portions of the official transcript of the consolidated proceedings before the Tax Court, as follows:

* * * * *

6. Memorandum findings of fact and opinion of the Tax Court.

7. Decisions of the Tax Court.

8. Petitions for review.

9. Statement of points on which petitioners intend to rely.

10. Stipulation relating to documents and exhibits.

11. This designation of contents of record for printing.

/s/ LOUIS EISENSTEIN,

/s/ RANDALL S. JONES,

/s/ EBERHARD P. DEUTSCH,

Counsel for Petitioners.

Acknowledgment of Service Attached.

[Endorsed]: Filed Sept. 26, 1957. Paul P. O'Brien, Clerk.